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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481AM

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6 In the Matter of:

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8 DELPHI CORPORATION, et al.,

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10 Debtors.

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14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 June 19, 2006

19 10:10 AM

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

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2 HEARING re Motion of the Offshore Group Pursuant to Bankruptcy

3 Code Sections 362(d)(1) and 553 for Order Lifting the Automatic

4 Stay to Permit the Offshore Group to Exercise Right of Setoff
5
6 HEARING re Motion of Dane Systems, LLC for Adequate Protection
7
8 HEARING re Motion of Ericka S. Parker, Chapter 7 Trustee,
9 Seeking Relief from the Automatic Stay to Allow Her to Continue
10 Asserting Counterclaims in Pending Litigation Being Prosecuted
11 by the Debtor
12
13 HEARING re Motion for an Order Authorizing the Examination of,
14 and Directing, Barclays Bank, PNC, to Produce Documents
15 Pursuant to Rule 2004 of the Federal Rules of Bankruptcy
16 Procedure
17
18 HEARING re Specmo Enterprises Motion for Relief from Stay to
19 Effect Setoff
20
21 HEARING re Motion Seeking Approval of Retention of Jeffries and
22 Companies Investment Bankers to the Creditors' Committee Under
23 Sections 328 and 1103
24
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2 HEARING re Motion to Approve Stipulation and Order Following
3 Pension Benefit Guaranty Corporation to File Consolidated
4 Claims Under One Case Number
5
6 HEARING re Motion for Order Under 11 U.S.C. Section 1121(d)
7 Extending Debtors' Exclusive Periods Within Which to File and
8 Solicit Acceptances of Reorganization Plan

9

10 HEARING re Retention Application of Fried, Frank, Harris,
11 Shriver & Jacobson LLP

12

13 HEARING re Motion of H.E. Services Company and Robert Backie,
14 Majority Shareholder for Relief from the Automatic Stay Under
15 Section 362 of the Bankruptcy Code

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17 HEARING re Motion of Cindy Palmer, Personal Representative of
18 the Estate of Michael Palmer, Deceased, for Relief from the
19 Automatic Stay Under Section 362 of the Bankruptcy Code

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21 HEARING re Motion for Relief from Automatic Stay Filed by
22 Petitioners, Mary P. O'Neill and Liam P. O'Neill

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2 HEARING re Motion for Order Under 11 U.S.C. Section 363(b) and
3 Federal Rules of Bankruptcy Procedures 2002 and 6004
4 Authorizing and Approving Debtors' Entry into Transfer
5 Agreement with Johnson Controls, Inc.

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7 HEARING re Motion of Automotive Technologies International,
8 Inc. for Relief from Automatic Stay to Proceed with Appeal of
9 Patent Litigation

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11 HEARING re Motion for Order Under 11 U.S.C. Sections 363, 502,
12 and 503 and Federal Rules of Bankruptcy Procedures 9019(b)
13 Authorizing Debtors to Compromise or Settle Certain Classes of

14 Controversy and Allow Claims Without Further Court Approval

15

16 HEARING re Motion for Order Under 11 U.S.C. Section 362 and

17 Federal Rules of Bankruptcy Procedures 7016 and 9019 Approving

18 Procedures for Modifying the Automatic Stay to Allow for

19 Liquidating and Settling and/or Mediating Certain Pre-petition

20 Litigation Claims

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2 HEARING re Motion of Orders Under 11 U.S.C. Sections 363 and

3 365 and Federal Rules of Bankruptcy Procedures 2002, 6004,

4 6006, and 9014 Approving Bidding Procedures, Certain Bid

5 Protections, Form and Manner of Sale Notices and Sale Hearing

6 Date and Authorizing and Approving Sale of Certain of the

7 Debtors' Assets Comprising Claims and Encumbrances, Assumption

8 and Assignment of Certain Executory Contracts and Unexpired

9 Lease and Assumption of Certain Liabilities

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1 P R O C E E D I N G S
2 THE COURT: Please be seated. All right. Delphi
3 Corporation.
4 MR. BUTLER: Your Honor, good morning. Jack Butler
5 from Skadden, Arps, Slate, Meagher & Flom, LLP here with my
6 colleagues, Kayalyn Marafioti and Al Hogan for our June 2006
7 omnibus hearing.
8 Your Honor, we filed the agenda for this hearing at
9 Docket No. 4228 and then amended at Docket No. 4230. With Your
10 Honor's permission, we'd like to use the proposed amended
11 agenda for the eighth omnibus hearing with one matter being
12 taken out of order, and that is matter number 20, the
13 MobileAria Sale Motion. We were proposed to take that at the
14 beginning of the contested hearings and that has to do with
15 making some travel accommodations for the purchaser who is
16 represented in court today and who have principals here in
17 court today and have asked us if we could take that at the
18 beginning of the contested matters. The debtors are prepared
19 to do that if it's acceptable to the Court.
20 THE COURT: Okay. That's fine.
21 MR. BUTLER: Your Honor, one other administrative
22 matter, scheduling matter, I wanted to bring to the Court's
23 attention at the beginning of the hearing. It was announced
24 this morning that the debtors had been able to conclude their
25 framework discussions and enter into a definitive agreement

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1 with the IUE/CWA on the terms of a special attrition program.
2 That occurred over Father's Day weekend and follows a further
3 agreement on a supplemental agreement for additional attrition
4 options for the United Auto Workers, the UAW. Both of those --
5 the framework discussions with the USW are continuing. Those
6 discussions were suspended for reasons outside of the control
7 of both the USW and the debtors and are scheduled to resume
8 this week. There were some personal matters relating to one of
9 the union officials that we needed to accommodate.

10 THE COURT: Okay.

11 MR. BUTLER: Those will begin this week. Your Honor,
12 we intend to file a motion by the end of the day today that
13 will be a motion seeking approval of the attrition programs for
14 the UAW and the IUE/CWA unions as we are quite anxious to
15 proceed with these attrition motions over the sort of 60 day
16 recess of the 1113/1114 matters and we would ask Your Honor for
17 the Court's permission to file the motion and issue a notice to
18 have it heard on ten days' notice at the June 29th. Your Honor
19 may recall that we're already scheduled to have a chambers
20 conference, the first of three chambers conferences under the
21 1113/1114 matters, dealing with the status and the progress
22 made in those cases. So, all -- I won't say all, most of the
23 relevant parties ought to be in this courtroom anyways for the
24 chambers conference. And I don't know whether the Court has
25 availability on that date at this point, but I was asked to

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1 make that request for the debtors. It's possible that would be

2 the only matter we would bring on. I just want to make -- I
3 know Your Honor may not be prepared to respond to it at this
4 point but I wanted to raise that issue.

5 THE COURT: Well, my clerk is going to get the
6 calendar but has this discussed with the creditors' committee
7 and the equities committee?

8 MR. BUTLER: Yes. I've advised the creditors'
9 committee and the equity committee that we would be making this
10 request.

11 THE COURT: Okay.

12 MR. BROUDE: Your Honor, Mr. Butler informed us about
13 it right before this hearing today. Haven't had a chance to
14 talk yet. We don't expect there will be a problem but, as I
15 said, we were just informed today.

16 THE COURT: All right. As I recall, the issues
17 primarily with regard to the earlier attrition program dealt
18 with how the funder of that program was dealt with under the
19 order and as long as those issues are adequately flushed out in
20 the motion, I think that ten days is probably adequate notice.

21 MR. BUTLER: Thank you, Your Honor. We will -- we
22 intend to file, when we file the motion, a motion seeking an
23 expedited hearing in a separate order for that matter and we'll
24 submit those to the Court as well.

25 THE COURT: Okay.

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1 MR. BUTLER: Thank you, Your Honor. Your Honor, is
2 it -- I'd like to proceed with the agenda at this point. If
3 you want to wait just a minute or --

4 THE COURT: Well, let me just check on the last
5 matter. Yeah, the 29th would be fine. I have time free that
6 day.

7 MR. BUTLER: Thank you very much.

8 THE COURT: Okay.

9 MR. BUTLER: Your Honor, the first three matters on
10 the agenda are being handled by the Togut firm, Mr. Berger.

11 MR. BERGER: Good morning, Judge. Neil Berger,
12 Togut, Segal & Segal for the debtors. We have the first three
13 matters on the calendar. The first is the Deutsche Dagan Order
14 to Show Cause. This is the last of the orders to show cause
15 Your Honor entered on account of post-petition payments made on
16 account of pre-petition obligations. I think it's safe to say
17 that this matter is nearly settled. We hope to be submitting
18 an order to Your Honor in the next week or two and that matter
19 will be done with.

20 THE COURT: Okay.

21 MR. BERGER: The next is the Offshore Group motion to
22 modify the automatic stay. This is the Mexican tax law, a
23 matter, Your Honor -- they produced surprisingly a hefty amount
24 of documents for the amount in controversy. Our client, our
25 business people have looked through that, we've analyzed it and

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1 we've sent off a proposal to Offshore. They asked for about a
2 week or ten days to look at it. Our goal is to resolve this
3 one as well. We think it's susceptible to a settlement and not
4 a contested matter and we agreed to adjourn it until the July
5 hearing.

6 THE COURT: Okay.

7 MR. BERGER: The next is number three, the BorgWarner
8 motion, Your Honor. This is the motion by BorgWarner Turbo
9 Systems for relief from the automatic stay to commence an
10 action in the Michigan State courts to liquidate a pre-petition
11 warranty claim. We made clear that we felt the relief was

12 inappropriate. The lawyers are for the time being finished
13 speaking. BorgWarner has assembled a new business team and
14 Delphi hopes to meet with them either this week or early next
15 week and see if we can't resolve on a business basis.

16 THE COURT: Okay.

17 MR. BUTLER: Your Honor, matter number four on the
18 agenda is the Dane Systems adequate protection motion at Docket
19 No. 3301. This involves adequate assurance involving a porta-
20 tooling lane. We've been involved in reviewing that security
21 interest and discussing an approach with Dane Systems. If the
22 company determines that the tooling lane is in fact valid, it
23 will be dealt with under one of the prior orders of the Court
24 in any event. As a result, we're asking the Court to put this
25 off to the July 19th hearing.

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1 THE COURT: All right.

2 MR. BUTLER: Matter number five, Your Honor, is the
3 Ericka Parker Lift Stay Motion at Docket No. 3705. This
4 involves the Chapter 7 trustee's desire to have the stay lifted
5 in order to counterclaim to litigation that we have commenced
6 in their Chapter 7 case. And also, in addition to file motions
7 for summary judgment and potentially to execute against the
8 debtors' estate. We think the motion for lift-stay, at least a
9 portion of it, would be appropriate seeing that we commenced
10 the litigation. We think the relief as requested is overbroad.
11 We're trying to sort out those issues and we engaged the
12 trustee on those matters. The conversations have expanded to
13 include a potential resolution of the entire controversy. As a
14 result, we're asking the Court to continue this matter to the
15 July 19th omnibus hearing.

16 THE COURT: All right.

17 MR. BUTLER: Number six is the Rule 2004 motion for
18 Barclays Bank which is being handled by Mr. Berger.
19 MR. BERGER: Judge, Neil Berger, Togut, Segal again.
20 Your Honor, we made a motion for an entry of a 2004 order of
21 Barclays Bank in connection with a nine million dollar claim
22 the debtors have in connection with a master swap agreement.
23 We served the Sidley Austin law firm and Barclays determined to
24 retain Allen and Overy, who's represented here today, to
25 respond to this matter. They weren't retained until pretty

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1 late in the game. They asked that this matter be adjourned
2 till July. The debtors initially opposed that request and late
3 on Friday we were able to negotiate the form of an interim
4 order that's in a form that's acceptable to the committee and
5 to Barclays so that we can at least start getting some of the
6 information to understand why Barclays hasn't paid the claim
7 that we're asserting.

8 We asked that it be carried to the July hearing
9 because all the documents that were contained on our original
10 scheduled production weren't agreed to. We didn't have quite
11 enough time. We're hopeful that we'll be able to resolve those
12 before we get to the July hearing but we wanted it on the omni
13 hearing in case we had to come back to Your Honor.

14 So, we have a form of an interim order that I can
15 turn into chambers after the hearing.

16 THE COURT: Okay. And the interim order is agreed?

17 MR. BERGER: Yes, it is and if I could ask counsel to
18 approach and confirm.

19 MS. TANISCHIO: And on behalf of Barclays, we do
20 agree with the proposed interim form and order.

21 THE COURT: All right. So just submit that and it

22 will get signed.

23 MR. BERGER: We'll do that. Thank you, Judge.

24 MR. BUTLER: Your Honor, matter number seven,

25 uncontested, agreed or settled matters, matter number seven,

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1 the Specmo Enterprises matter is also Mr. Berger's.

2 MR. BERGER: Hello, Judge. Neil Berger, Togut,
3 Segal. Your Honor, early in the case, Specmo Enterprises filed
4 a motion seeking relief from the automatic stay to effect a
5 setoff of some 367,000 dollars. The motion did not have
6 attached to it any supporting documentation. Shortly after the
7 motion was filed, counsel for Specmo became seriously ill and
8 was away from his office until just recently. He did come
9 back, we got information from him. Our client, the debtors,
10 were satisfied in the amount, maybe a dollar or two. They were
11 satisfied with mutuality as well. As per the protocol we've
12 developed in the setoff area of the case, the committee was
13 given an opportunity to review the proposed resolution of the
14 setoff request. They, too, were satisfied with the amount and
15 mutuality. We've entered into a form of a stipulation to
16 effect the setoff. It provides for the setoff of the 367,430
17 dollars. Specmo has given an opportunity to file a pre-
18 petition unsecured claim. The stipulation does not fix the
19 claim. They need to file at the earlier 30 days from today or
20 the bar date. The committee and other parties in interest and
21 the debtors reserve the rights to examine that claim.

22 The form of the stipulation has been agreed to by the
23 committee, as well. I have that on a disk and I'll submit that
24 to chambers, as well.

25 THE COURT: Okay, that's fine.

1 MR. BERGER: Thank you, Judge.

2 MR. BUTLER: Your Honor, number eight on the agenda
3 is the Jeffries and Company final hearing and I think Mr.
4 Broude's handling that matter.

5 MR. BROUDE: Good morning, Your Honor. Mark Broude
6 of Latham & Watkins, counsel for the official committee of
7 unsecured creditors. Back in February, we filed a motion
8 seeking approval of retention of Jeffries and Companies
9 investment bankers to the creditors' committee under Sections
10 328 and 1103. This Court entered an interim order in April and
11 in accordance with the terms of that order, we served notice of
12 this hearing on all known creditors of the debtors. In
13 addition, last week we sent to both counsel for the debtors and
14 to the U.S. trustee the form of final order blackline so it
15 shows changes against the interim. We've received no comments
16 to the order and no objections. So, if Your Honor likes, I
17 have the final order that I can hand up.

18 THE COURT: That's fine. You can hand that up in
19 light of there being no objections and obviously the wide
20 notice because of the 328(a) nature of the retention. It was
21 warranted but I'll approve it.

22 MR. BROUDE: Would Your Honor like a copy of the
23 blackline as well?

24 THE COURT: Yes.

25 MR. BUTLER: Your Honor, the next matter on the

1 agenda is matter number nine. This is the lease rejection
2 notice at Docket No. 3222 involving Universal Tool and
3 Engineering Company who had filed a -- we filed a notice of

4 rejection at Docket No. 3462 and they had filed an objection at
5 Docket No. 4158 which would bring us to Court.

6 Your Honor may recall, under the procedures that were
7 approved for the unexpired leases and the abandonment of
8 personal property, we go through notice procedure and only if
9 the lessor has issue, or some other parties, do they end up
10 back in front of Your Honor.

11 We're pleased to tell the Court that we have resolved
12 this matter with respect to property located at 7601 East 88th
13 Place in Indianapolis, Indiana. Pursuant to the proposed
14 order, the lease will be deemed rejected as of April 30th, 2006
15 and the lessor reserves all of its rights relating to that
16 matter provided that they cannot assert and the future of the
17 lease has not -- has not been or could not be -- have been
18 rejected as provided for in the order.

19 So, we resolved the notice issue which is the
20 rejection and we'll deal with other claims they may assert as a
21 result of that subsequent one.

22 THE COURT: Okay. I have no problem with any of that
23 but let me just ask you. Under the bar date order, is it clear
24 when they have to file their rejection claim? Or, do we need
25 to put that into this order?

23

1 MR. BUTLER: No, under the bar date order, they have
2 till the later of 30 -- the bar date for 30 days after the
3 entry of this order.

4 THE COURT: Okay. And their reservation -- they
5 understand their reservation of rights doesn't waive the bar --
6 doesn't give them freedom from the bar date? They still have
7 to file their proof of claim?

8 MR. BUTLER: I believe -- I can't go to state of

9 mind, Your Honor. I don't know if the UTS counsel is here, but
10 we'll certainly advise them of what Your Honor is -- and that's
11 certainly the debtors' position.

12 THE COURT: All right. All right. I read paragraph
13 2 pretty carefully and I think it doesn't relieve them of the
14 bar date but it doesn't state a bar date so I just wanted to
15 make sure that the existing order covers them and what you said
16 does remind me that it does. So --

17 MR. BUTLER: Your Honor, would you be more
18 comfortable if we added a third -- another paragraph to just
19 reaffirm that?

20 THE COURT: That's probably a good idea.

21 MR. BUTLER: Okay. We'll do that and submit a
22 revised order.

23 THE COURT: Okay. Your Honor, number 10 on the
24 agenda is the Pension Benefit Guaranty Corporation motion to
25 file consolidated claims filed at 3880. The agenda says this

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1 matter has been resolved. Actually, PBGC and the debtors had
2 worked this matter out prior to the filing of the motion.
3 There has been no objection filed by any party and this is
4 simple math, Your Honor. The PBGC has three proofs of claim to
5 file against seven plans and the question is whether they file
6 that in one case or in 42 cases. So, do they file 21 claims or
7 21 times 42 claims, it states. And the order provides that
8 they can file one time as the parent company and it will be
9 deemed filed in all of the affiliate debtor cases. We have no
10 objection, Your Honor, and I don't know if there's someone here
11 from the government who wants to speak. They are represented
12 by counsel here. I think I fairly stated the relief requested
13 and the debtors support it.

14 THE COURT: Okay. I'll approve this motion.

15 MR. BUTLER: Thank you, Your Honor.

16 THE COURT: And so, I'll just so order the
17 stipulation?

18 MR. BUTLER: Yes, Your Honor. Thank you.

19 THE COURT: Okay.

20 MR. BUTLER: Your Honor, the next matter on the
21 agenda, matter number 11, is the 1121(d) exclusivity second
22 extension order motion. This is filed at Docket No. 4035.
23 With Your Honor's approval, this would move the period -- the
24 exclusivity periods to file plan from August 5th, 2006 to
25 February 1, 2007 and the solicitation period from October 4th,

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1 2006 to April 2nd, 2007. No party has filed an objection to
2 the relief requested. Your Honor, we concluded when reviewing
3 this matter with the company's board of directors to seek an
4 extension in the very same timeframe we sought during the first
5 motion and sort of take this in phases. The debtors, Your
6 Honor will recall, when we first appeared here back in October
7 of last year, told Your Honor we expected to -- if all goes
8 according to the debtors' transformation agenda, we hope to
9 emerge before the -- during the first half of next year. So,
10 while there may be a third request, we don't expect that to be
11 a lengthy request. If we can stay on the current timeframe --
12 if facts and circumstances change and there's cause for further
13 or more lengthy extension, we'll come back to the Court
14 accordingly.

15 THE COURT: Okay. All right. And I know this was
16 unopposed as well. Oh, maybe it isn't. Is someone standing
17 up? No. All right. In light of that fact, and -- in light
18 and in view of --

19 MR. BUTLER: My colleague -- and he's not going to
20 stand up again, Judge.

21 THE COURT: In light of that fact, I -- in my review
22 of the motion and my familiarity with the case, I'll approve
23 it.

24 MR. HOGAN: We'll submit the order to chambers, Your
25 Honor. Thank you.

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1 MR. BUTLER: Your Honor, the next matter on the
2 agenda is the Fried, Frank retention application at Docket No.
3 4039. It's also unopposed. I don't know if Ms. Steingart
4 wanted to present it.

5 THE COURT: Good morning.

6 MS. STEINGART: Good morning, Your Honor. Bonnie
7 Steingart from Fried, Frank on behalf of the official committee
8 of equity holders. We have submitted the order regarding our
9 retention. It's been reviewed by the U.S. trustee, by the
10 debtor, by the creditors' committee and there have been no
11 objections. So, we seek to be retained pursuant to 328 and
12 1103 of the Bankruptcy Code. And I have an order.

13 THE COURT: Okay. All right. In light of there
14 being no objections and my review of the motion, I'll approve
15 it.

16 MS. STEINGART: Thank you.

17 MR. BUTLER: Your Honor, the next matter on the
18 agenda would be matter number 20, going out of order as we
19 indicated we would for this one matter. Matter number 20 is
20 the MobileAria Sale motion at Docket No. 4040. The only
21 objection is a limited objection of the official equity
22 committee at Docket No. 4215. We filed a reply at Docket No.
23 4246.

24 Your Honor, this motion deals with the assets of one
25 of the subsidiary debtors, MobileAria, Inc. Your Honor may

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1 recall this is one of the three trailing debtors that filed
2 Chapter 11 a few days after the October 8th filing of the
3 parent and substantially all the other affiliated debtors.
4 This is a proposal to sell substantially all of the assets of
5 MobileAria, which consist essentially of intellectual property
6 and contract rights involving a Verizon contract and some
7 related assets described more thoroughly in the motion to a
8 proposed purchaser, Wireless Matrix, in the amount of six and a
9 half million dollars and other consideration. The proposed
10 sale is subject to approval by this Court and additional
11 competitive bidding pursuant to the proposed bidding
12 procedures.

13 Your Honor, to facilitate this sale, which the
14 debtors determined was one of their assets that was not a
15 continuing core asset but was rather a non-core asset, the
16 debtors previously engaged Pagemill Partners, LLC to develop
17 soliciting and assist MobileAria in evaluating a proposed
18 transaction. And after identifying potential partners and
19 soliciting proposals, MobileAria, in its business judgment,
20 determined that the Wireless Matrix offer was the highest or
21 otherwise best offer to MobileAria providing, in the debtors'
22 view, the most appropriate terms and economic benefit to
23 MobileAria.

24 One of the reasons, Your Honor, the debtors
25 determined that this asset was non-core was because -- was in

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1 fact because it wasn't in the debtors' core business plan in
2 terms of product footprint, but in addition, the timing in this
3 was designed because in evaluating cash infusions, MobileAria,
4 which is a technology company, requires additional cash
5 infusions in the not distant future to deal with their growth
6 and the growth of their business lines and the debtors believed
7 it was appropriate to try and obtain the best value for the
8 assets and allow a purchaser who wants to grow this business to
9 take it forward.

10 I'm not going to go through all of the various
11 aspects of the transaction here today or of all the bidding
12 procedures that we have proposed. This is -- in the scheme of
13 a company with the size of the assets we have, this is not the
14 largest sale in the world, but it will generate, we believe,
15 the six and a half million dollars worth of proceeds -- that
16 they wanted Your Honor to be aware of.

17 And the only objection that we have is one from the
18 equity committee that basically indicates that while they
19 received all the notices under the order, they do not
20 participate as a mandatory participant in the auction, in
21 getting copies of the bids and participating in the auction
22 process. We have delegated that. The only parties that do
23 that under the proposed bidding procedures are the debtors, the
24 creditors' committee and counsel to the DIP and pre-petition
25 lenders, both of whom have a lien in these assets, and,

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1 therefore, have a direct economic interest.

2 That is the only objection and unless Your Honor
3 wants to hear more from the debtor, I'll turn it over to the
4 equity committee.

5 THE COURT: Okay.

6 MS. STEINGART: Good morning, Your Honor. Bonnie
7 Steingart again. This objection has been filed in connection
8 with a number of objections that the equity committee has
9 interposed to forms of order. We believe that as an official
10 committee, we should receive the same kinds of notices that are
11 routinely provided to the creditors' committee. As we
12 indicated in the filing with the Court, we are mindful that we
13 are to speak on transformational issues. To the extent that
14 the debtors exit businesses, we think that this is part of
15 transformational issues. To the extent that we have any
16 interest in either voicing an objection or participating, we
17 understand that we must make a showing to the Court as to the
18 reason why.

19 As a committee, I think our committee members believe
20 that they should be kept informed in the same way that other
21 statutory committees are informed. So, we've objected to this
22 order as we have other orders that exclude from the routine
23 statutory committee notice provisions noticed to the official
24 committee of equity holders. We don't believe that it will
25 create extra burden or expense. With respect to what the

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1 debtors are already doing, Counsel now has been retained so
2 that we can advise the committee on a consistent basis as to
3 what the scope of its obligations are and what the scope of
4 this Court's authorization of their activity.

5 But at the same time, I think it's important for
6 those committee members to feel that they are being informed
7 and they are being included in a manner that is customary for a
8 statutory committee. Thank you, Your Honor.

9 MR. BUTLER: Your Honor, just so it's clear what

10 we're arguing about here, in the proposed form of order -- the
11 proposed form of order provides that we are entitled in
12 connection -- the debtors are entitled, in connection with the
13 bidding procedures, to consult with representatives of any
14 official committee or significant constituent but are not
15 required to, not directed to. And it provides that the notice
16 of the sale hearing will specifically go to counsel for the
17 equity holders committee. So, the notice procedure, on
18 paragraph 8(a) of the proposed order -- they are included.

19 What they are not included in is the bidding
20 procedures which would require parties to submit the bids to
21 the equity committee for their review and comment nor does it
22 provide in the auction that they are entitled to attend and
23 participate in the auction. On page 6 of the bidding
24 procedures, the auction is limited to the seller, the
25 purchaser, representatives of the creditors' committee and its

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1 secured lender, as well as any qualified bidder. It does not
2 include the equity committee. And it did not, in this case,
3 because we believe Your Honor's opinion and order in appointing
4 the equity committee was for a limited purpose. And it was for
5 transformational issues. It wasn't for every thing that a
6 statutory committee could possibly do.

7 This is a six and half million dollar sale in a case
8 that has tens of billions of dollars worth of assets and
9 liabilities. And the debtors did not believe that we should be
10 paying free franc to attend the auction and participate in the
11 auction when the creditors' committee is already involved in
12 that. And, you know, it ultimately, if the purpose -- if what
13 this is all about is the equity committee having every right
14 and prerogative that the creditors' committee does, then it's a

15 different committee than we thought Your Honor appointed back
16 in March.

17 MS. STEINGART: Just briefly, Your Honor. Just
18 because the committee does have the right to attend and to
19 participate, or counsel for the committee does, does not mean
20 it will. The important issue I think that's before the Court,
21 and I think in a more pressing way with respect to the other
22 forms of order that we have objected to, the issue before the
23 Court is who gets to make that choice? And I think that given
24 the appointment of the committee, given the fact that Your
25 Honor's order is explicit, that the committee should be given

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1 an opportunity to receive the notices and to decide whether it
2 will or not participate. To the extent that the committee
3 makes the wrong choice with respect to that, your opinion and
4 Mr. Butler in a number of conversations has made it abundantly
5 clear that all prerogatives to object to fees or other
6 activities will be exercised to the fullest.

7 So, we're not uncertain about what will occur should
8 the committee conduct itself in a manner that the Court or
9 other parties or the U.S. trustee believes to be inappropriate.
10 However, that does not mean that the choices about what the
11 committee will participate in and how it will participate and
12 how indeed it will justify that participation should belong to
13 counsel other than counsel for the committee. And I do believe
14 that until we get to a point where those decisions are shown to
15 be made in a manner that is either disruptive or creates
16 additional burdens that the debtor doesn't already have, until
17 we get to that point, I don't think that receiving the
18 customary inclusion that other statutory committees have runs a
19 foul of anything that has been done so far, Your Honor.

20 So, I would ask that we be included in that way and
21 that the committee be able to make its decision about how it
22 will participate with the understanding that the provisions and
23 restrictions are clear to us. Thank you.

24 THE COURT: All right. Well, the order appointing
25 the equity committee, I think, limited its function but the

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1 issue is whether this type of motion is within that limitation
2 or not. The order refers to the scope of the appointment being
3 to form on behalf of the shareholders in respect to
4 transformation issues. At one level, this is a transformation
5 issue because it's part of the debtors' determination to exit
6 various businesses. On the other hand, it's hard to believe
7 that a six and a half million dollar sale is truly
8 transformative.

9 But, it seems to me that when the debtor is talking
10 about selling an actual business, it's encompassed by
11 transformation. So, I believe the committee should get notice
12 of the bids. Conceivably if someone threw in a bid for twenty
13 million dollars, they might say well, why aren't we holding on
14 to this asset instead of selling it?

15 I think the debtors should just provide the notices.
16 It's really kind of a pain in the neck for bidders to start
17 sending out five or six packages. So, if you could just give
18 copies of the bids to Fried, Frank -- obviously, if the bids
19 are all in the range of six and a half, seven million dollars,
20 I wouldn't expect Fried, Frank to be particularly active on the
21 matter, although I would expect them probably to attend the
22 auction. On the other hand, if there's remarkable interest in
23 the asset, then it probably would lead to the legitimate
24 inquiry as to whether it should go forward to an auction or

25 not.

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1 MR. BUTLER: So, is the Court wanting --

2 THE COURT: This is not an overall ruling. This is
3 just really dealing with this motion.

4 MR. BUTLER: But, with respect to MobileAria, the
5 Court wants Fried, Frank to be able to come and attend the
6 auction? That's where it's supposed to change the bidding
7 procedures to do that?

8 THE COURT: To attend the auction and to get notice
9 of the bids.

10 MR. BUTLER: We will make those changes.

11 THE COURT: In my view, getting notice of the bids is
12 more important than attending the auction because if the bids
13 are -- if there are no bids, there won't be an auction but if
14 there are bids in the range of six and a half million, then I
15 don't think an additional law firm is going to add much at the
16 auction. But that's what Ms. Steingart said she -- she knows
17 that.

18 MR. BUTLER: Your Honor -- and we'll do that. I just
19 want to make one comment about the statement that Ms. Steingart
20 made. The debtors don't want their only remedy here to be to
21 object to a fee application six months after the fact.

22 THE COURT: No, I understand that. And I don't want
23 it, either, but if, as she said, if the equity committee starts
24 trying to throwing its weight around in areas that aren't
25 appropriate, you can come back to me well before a fee

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1 application.

2 MR. BUTLER: Thank you, Your Honor.

3 MS. STEINGART: Thank you, Your Honor.

4 THE COURT: And I just got -- one reason I was a
5 little late -- the debtors' response on the information letter
6 and I wasn't able to wade through it all, so I'll deal with
7 that separately.

8 MR. BUTLER: Thank you, Your Honor. Your Honor, with
9 respect to the balance of matter 20, would those changes in the
10 bidding procedures --

11 THE COURT: Well, I had one other comment on that
12 'cause I got the blackline that dealt with executory contracts.
13 And I think that the notice provision, if there's a different
14 purchaser than the stalking horse, is probably insufficient.
15 It's less than ten days. It's probably only about four or five
16 at most. So, I think that the order should provide that there
17 will be ten days notice if someone other than the stalking
18 horse wins the auction for objections to a assumption and
19 assignment other than cure, like adequate assurance or future
20 performance. And that if there is an objection, the Court will
21 schedule a hearing promptly on that issue. Other than that,
22 the order looked fine.

23 MR. BUTLER: And we'll make those revisions, Your
24 Honor, and submit the changes.

25 THE COURT: Okay.

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1 MR. BUTLER: Your Honor, the next matter up is, going
2 back to the agenda order, is matter number 13. This is the H.E
3 Services Company lift-stay motion filed at Docket No. 2705 with
4 related pleadings as indicated on the amended agenda.

5 This involves a lift-stay matter to deal with pending
6 actions arising out of a minority supplier relationship. And I

7 believe Counsel is here to present the motion.

8 MR. MASTROMARCO: Good morning, Your Honor. Victor
9 Mastromarco on behalf of the claimant. This is Docket No. 2705
10 originally filed. Our lift-stay motion as it relates to a
11 filing, a complaint that was filed on February 16th, 2005
12 before the United States District Court for the Eastern
13 District of Michigan, northern division.

14 The claims involve a number of different claims.
15 One, in particular, that I want to emphasize is the civil
16 rights violations pursuant to 19 -- Section 1981. There are
17 also claims for promissory estoppel and misrepresentation and
18 breach of contract. Originally, after the complaint was filed
19 in February, Delphi responded -- the debtor responded with a
20 motion to dismiss which resulted in an amended complaint being
21 filed which we have provided to the Court. When Delphi failed
22 to answer the amended complaint, we applied for a default
23 before the judge and Delphi then later responded with another
24 motion to dismiss. Those actions were pending. They had been
25 set for hearing for November 2 at the same time as a scheduling

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1 conference had been set and as a result, the stay was entered
2 in October so those matters did not go forward.

3 THE COURT: Was that first motion to dismiss heard?
4 Or did the claimant just amend the complaint?

5 MR. MASTROMARCO: It was heard and it resulted in an
6 amended complaint being filed.

7 THE COURT: Okay.

8 MR. MASTROMARCO: The -- I wanted to indicate that
9 because the complaint is premised in part of 42 USC 1981 which
10 states a discrimination claim on behalf of not only Mr. Backie,
11 who is a minority in his individual capacity, but also on

12 behalf of H.E. Services, which is a minority company, and both
13 those claims the Courts have held in the past in this district
14 that discrimination claims should be handled akin to personal
15 injury claims and thus our subject to Section 157(b)(5).

16 In the case that I'd like to cite to the Court,
17 Erickson v. Erickson, at 330 BR 346, the Court -- and that's a
18 September 15, 2005 decision -- the Court states on page 349,
19 "pursuant to 28 USC 15" -- I'm sorry -- "157(b)(2)(o), a
20 bankruptcy court may not hear and determine a personal injury
21 tort claim." Citing to the footnote, 157(b)(2)(o) provides in
22 relevant part that a bankruptcy court may hear and determine
23 proceedings affecting the adjustment of the debtor/creditor
24 relationship except personal injury tort claims. 157(b)(5)
25 provides "the district court shall order that the personal

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1 injury tort and wrongful death claims shall be tried in the
2 district court in which the bankruptcy case is pending or in
3 the district court in the district in which the claim arose as
4 determined by the district court in which the bankruptcy case
5 is pending."

6 Although there are court rulings to the contrary, the
7 Court in Erickson agreed that -- with Judge Weil that "claims
8 alleging that a debtor illegally discriminated an employment on
9 the basis of race, creed, disability or sex are personal injury
10 tort claims." Citing the Strands v. Ice Cream Liquidation,
11 Inc. case at 281 BR 154 at 161.

12 The Court goes on to indicate --

13 THE COURT: None of this is briefed in your papers,
14 right?

15 MR. MASTROMARCO: No, we did not cite these cases,
16 Judge.

17 THE COURT: Or the issue, generally, right?

18 MR. MASTROMARCO: Well, you're right. We'd ask the
19 Court to take judicial notice of Section 157(b)(5).

20 THE COURT: Okay.

21 MR. MASTROMARCO: We would indicate that the Erickson
22 case also citing In re New York Medical Group, P.C. --

23 THE COURT: I'll read it. You don't have -- this is
24 not productive. I'll read the case.

25 MR. MASTROMARCO: All right. The upshot is this. If

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1 we apply the Sonnax Industry standards to a discrimination
2 case, because this Court cannot liquidate the discrimination
3 claims, the Court in Erickson comes to the conclusion that it's
4 readily apparent that the movant is entitled to relief from the
5 stay so she may liquidate the claim.

6 Here is the same situation. We must liquidate that
7 claim or those claims in order to place a value for the Court
8 then to determine how that would fit in with the bankruptcy
9 situation. That's all we're asking the Court to do, is to
10 allow us to go back to the U.S. District Court, allow us to
11 liquidate that claim there and then -- and those other claims
12 there since the judicial economy would suggest that all the
13 claims should be allowed and grant an order accordingly.

14 THE COURT: Okay.

15 MR. BUTLER: Your Honor, just -- seeing as Counsel
16 dealt with the history, let me just briefly address the history
17 of this case. The complaint was originally filed out of a
18 minority supplier relationship alleging that the supplier
19 didn't get the contracts it would have liked to have gotten
20 from Delphi. A complaint was filed on February 16th of '05.
21 It was dismissed on May 19th of 2005. There was an amended

22 complaint filed on June 9th of 2005. The answer would have
23 been due on or about July 9th. The answer was filed, in fact,
24 on July 11th. Counsel tried to get a default judgment. The
25 clerk would not enter it because there was a power outage in

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1 Saginaw, Michigan during that period of time and there was some
2 issue about the ability to actually prepare or file anything
3 over a couple day period. And so the Court deemed the filing
4 on July 11th timely, although Counsel has filed a motion to
5 dismiss which is pending -- excuse me, a motion for default
6 judgment, which is pending before that Court.

7 On August 24th, 2005, Delphi filed its second motion
8 to dismiss and we concur that there was a scheduling conference
9 set for November 2nd of 2005 which did not take place.
10 Instead, the federal judge in that case administratively closed
11 the litigation on October 24th, 2005 following the commencement
12 of Chapter 11 cases on October 8th.

13 Now, that's the sum and substance of the activity in
14 this litigation which is in its infancy. And the debtors, you
15 hear, is whether counsel chooses to color the complaint a
16 discrimination complaint or a breach of contract complaint, as
17 they do in their complaint, to where they talk about breach of
18 contract and other theories. The fact is that we think under
19 Sonnax, and we've advised counsel of this -- he knows that we
20 don't have insurance to cover the liability associated with
21 this particular claim -- that we're not prepared for trial.
22 This is involved in its infancy. There's been nothing in this
23 case beyond the second motion to dismiss to be filed. There's
24 been no discovery of any kind. And we believe, under Sonnax,
25 Your Honor, that the balance of the harms weighs very much in

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1 the favor of denying the H.E. Services motion at this point in
2 the debtors' Chapter 11 case.

3 I point out, Your Honor, that H.E. Services filed a
4 supplement to its motion at Docket 3263 where it said that this
5 motion was very similar to the Automotive Technologies
6 International where you granted some relief at Docket No. 3200.
7 The facts are those cases are very different. The ATI cases
8 had been filed years earlier and the ATI cases were actually on
9 appeal, the issues had been fully briefed in the appellate
10 courts and the parties were simply waiting oral argument. A
11 very different case than a complaint filed that had been
12 dismissed and then refiled and was waiting a second motion for
13 dismissal.

14 Your Honor, we believe that, as I said and as our
15 responsive papers said, that under the Sonnax factors, we think
16 they clearly weigh in favor denying the motion at this time.
17 Thank you.

18 THE COURT: Do you have any view on the 28 USC
19 157(b)(5) point?

20 MR. BUTLER: Your Honor, I hadn't reviewed the matter
21 because -- you're right, it hadn't been raised or briefed.
22 But, even if it were so, I don't think that with respect to
23 Sonnax, says that gives anyone -- I mean, the carte blanche to
24 come in and get those stay lifts in every case. I mean, if
25 that were the law, then anyone who had any kind of a tort claim

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1 here would always win their motion to lift-stay. And that's
2 not the law in this district. The fact is Sonnax still gets

3 applied against tort claims and against other claims that may
4 not ultimately be liquidated by Your Honor. The fact is that
5 under Sonnax, this estate, at this moment in time, when we are
6 involved in some of the most sensitive issues in the case in
7 terms of the ultimate transformation, shouldn't have to be --
8 should have the protection of the automatic stay and not have
9 to deal with claims issues of this nature at this time. And
10 that's why I think that because there's no insurance here,
11 because we would have to treat this as a full-blown hundred
12 million dollar litigation, as Counsel suggests, and have to
13 take the time to resources, both externally and internally, to
14 defend it, under Sonnax, at this point in our case, it would be
15 inappropriate to lift the stay to permit that.

16 And I don't think the 157 issue has -- while it may
17 have some bearing on it ultimately, at some future date, I
18 don't think it really comes into the calculus, Your Honor, in
19 weighing the harms and balancing the harms in terms of the
20 Sonnax factors for this hearing today.

21 THE COURT: Okay.

22 MR. BUTLER: Thank you, Your Honor.

23 MR. MASTROMARCO: Briefly, Your Honor, may I respond?

24 THE COURT: Sure.

25 MR. MASTROMARCO: Not only does it -- is it an

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1 important factor in the Sonnax analysis, but the cases that I
2 cited suggest that it's probably the only factor that the Court
3 can consider because of the fact that all these arguments that
4 are being made that we don't want to deal with it at this time,
5 we don't want to handle this at this time, this is going to
6 upset these other things, those claims have to be liquidated.
7 So, we have to deal with it now because we have to know, we

8 have to be able to put those claims back to the District Court
9 and I'd cite again to Erickson where they say "proof that the
10 debtor intentionally and maliciously injured the movant by
11 illegally discriminating against her necessitates proving the
12 underlying discrimination allegations which the bankruptcy
13 court lacks jurisdiction to hear." And that's Black Letter Law
14 in New York, Second Circuit.

15 So, I would ask that the Court allow us to go back to
16 the -- and when we look at the factors, we're saying is this
17 Court better equipped to handle it than the U.S. District Court
18 judge as it relates to these specific issues? Yes, I think
19 that the U.S. District Court judge is a good form for this
20 matter to be tried. He's familiar with the issues, he's dealt
21 with motions to dismiss -- and I'm not going to go and argue
22 with Mr. Burke today about what occurred in the lower court --
23 or in the district court, I should say -- but the fact is that
24 they have local counsel there. They have them assigned not
25 only to the H.E. Services case, but they got the same counsel

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1 assigned on the Cindy Palmer case, which we're going to argue
2 next. And this is not going to be taking away from the
3 debtors' efforts in this case because they -- this Court has to
4 grapple with that liquidation issue.

5 And so, we would ask that the Court allow the
6 district court judge or -- lift the stay so that the district
7 court judge can hear these claims.

8 THE COURT: Okay. All right. I have in front of me
9 a motion by H.E. Services for relief from the automatic stay to
10 pursue litigation in Michigan District Court that was pending
11 before the commencement of the debtors' Chapter 11 cases.

12 It's averred by the debtors, and I don't think

13 disputed by the movant, that there either is no insurance
14 coverage for this litigation or there's an issue as to whether
15 there is insurance covering the claim -- is obviously an
16 unsecured claim, as well, given that fact and given the Second
17 Circuit's case, In Re Sonnox Industries, 907 F2d. 1280 (2nd
18 Cir. 1990), which says that a movant seeking a lift from the
19 automatic stay must make an initial showing of cause.

20 I had originally believed, based on my review of the
21 papers, that I did not need to get into the various Sonnox
22 factors given that it did not appear that such an initial
23 showing had been made. That is because, again, it's recognized
24 by the Courts in this district that relief from the automatic
25 stay to pursue the liquidation of an unsecured claim is

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1 unusual, and extraordinary circumstances normally need to be
2 shown, such as the fact that there is full insurance coverage
3 or the claim is being liquidated really for the purpose of
4 going against a third party or there's a special tribunal in
5 which it is being heard. It was not stated in the motion
6 papers, but it was stated at oral argument, that
7 notwithstanding in plain language of 28 USC Section 157(a)(5)
8 which deals with personal injury, tort and wrongful death
9 claims and was obtained by the plaintiffs' bar in light of the
10 mass tort asbestosis litigation that affected bankruptcy courts
11 and cases before the enactment of that provision that that
12 provision applies to at least one of the claims asserted in
13 this litigation which is an antidiscrimination civil rights
14 violation claim.

15 I will need to review the case law on that issue.
16 However, applying the Sonnox factors and giving the movant the
17 benefit of the doubt on that issue based on the representation

18 to the Court, I believe and find that there's a reasonable
19 likelihood that the debtor will prevail on the motion and,
20 therefore, I'm going to treat this as the preliminary hearing
21 on the motion and we'll adjourn to the next omnibus date under
22 362(e).

23 In looking at the Sonnax factors, it appears to me
24 that the only one of them that may apply here in the movant's
25 favor is the factor pertaining to whether a specialized

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1 tribunal had been established to hear the cause of action.
2 And, of course, it's asserted that the District Court is not
3 particularly a specialized tribunal but that it has
4 jurisdiction to the exclusion of the bankruptcy court with
5 regard to the trial of the matter under 28 USA Section
6 157(a)(5). On the other hand, that rule may not be dispositive
7 given the status of the debtors' case. Among other things, the
8 bar date has not run yet and the debtors are in the early
9 stages, if at all, in dealing with the claims against them.

10 So, again, it appears likely to me that the debtor
11 will prevail but I'll review this case law that's been asserted
12 and adjourn the hearing until the next omnibus date.

13 MR. BUTLER: Thank you, Your Honor. Your Honor, do
14 you want any more from the parties on this matter for the next
15 omnibus date or just that the Court's going to take it under
16 advisement?

17 THE COURT: The debtors are free to file something if
18 they wish. I'm not telling them that they have to. I'll
19 review the case law myself, but if you want to file something,
20 you can do that.

21 MR. BUTLER: Thank you, Your Honor.

22 MR. MASTROMARCO: Your Honor, if the debtor does, I

23 would also like the Court to allow me to file a short brief
24 setting forth these issues that I've --
25 THE COURT: Well, but you've already -- you took

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1 today as the opportunity to do that and --
2 MR. MASTROMARCO: A limited brief, Judge.
3 THE COURT: -- in my mind, that's sufficient.
4 MR. BUTLER: Your Honor, the next matter on the
5 agenda is matter number 14. This is the Cindy Palmer lift-stay
6 motion filed at Docket No. 2708. And again, I'll defer to
7 Counsel for presenting the motion.
8 MR. MASTROMARCO: Victor Mastromarco on behalf of the
9 estate. This is a personal injury cause of action where the
10 plaintiff's decedent was crushed in a machine and the case had
11 been filed originally back in 2001 and went through a lot of
12 discovery. The trial court had granted a motion on behalf of
13 Delphi for summary -- what we call summary disposition, which
14 is similar to Rule 56 in federal court. The case had gone to
15 the Court of Appeals and oral arguments had been set for
16 October 12, 2005 and the bankruptcy stay was entered three days
17 before that argument date.
18 What we're asking for is again, pursuant to Rule 157
19 that we've cited in the Backie matters, (b)(5), that we be
20 allowed to pursue this matter in the state appellate court or
21 have it removed to the federal district court to decide whether
22 it should go to the Court of Appeals and resume arguments
23 there.
24 We were at the end of the road with the Court of
25 Appeals, although that's the first stage of appellate review in

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1 Michigan. We would ask that we be allowed to do several
2 things: number one, have the oral arguments since all the
3 briefs have been submitted by the parties. Everyone is
4 ready -- was ready to go. We had already prepared for the
5 hearing. If in the event that the Court of Appeals rules
6 against us on that motion, we would ask that the Court also in
7 the same order allow us to avail ourselves of the application
8 procedures to the Supreme Court for the State of Michigan. In
9 the event that we are successful, we would ask that the Court
10 allow us to go back down to the state court and have that Court
11 determine and liquidate the claim and then, of course, if, in
12 fact, we are successful, we would want that the Court here
13 would have exclusive jurisdiction over any of those issues
14 pertaining to how that would fit into the debtors' estate.

15 I am unaware -- I believe there may be insurance
16 involved but I cannot indicate that for a fact for the Court
17 because we never asked that when we were in the underlying case
18 and I haven't asked that here.

19 THE COURT: Okay.

20 MR. BUTLER: Your Honor, again, just with Counsel's
21 recitation of the record below, just so the record here is
22 clear, in 2001 there was a wrongful death action filed. In
23 November 2002, there was -- summary disposition was granted in
24 favor of Delphi Corporation and a series of other defendants at
25 that time. This made its way to the Michigan Court of Appeals

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1 where it was to have been heard in oral argument on October
2 12th of 2005. Obviously, our bankruptcy intervened as to
3 Delphi Corporation on October 8th and that argument did not
4 occur vis-a-vis the Palmer estate and Delphi Corporation.

5 It did continue as to all the other defendants on
6 November 8th, 2005. The Michigan Court of Appeals affirmed the
7 orders of the circuit court granting defendants' motions for
8 summary disposition until the matter's been concluded as to all
9 of the parties. We had indicated to Counsel, and I'll indicate
10 again on this record, that we would not oppose a modification
11 of the automatic stay, if that's what Counsel wants, to go and
12 have the same argument in front of the Michigan Court of
13 Appeals. That matter has been fully briefed and we do believe,
14 as we have in some other matters, based on the Sonnax factors
15 and otherwise, that if that's what they want to do, it's not
16 undue hardship to expend the time and effort to go and make
17 that argument in front of the Court of Appeals.

18 We do think, Your Honor, however, should ask the
19 counsel to come back to this Court and justify a subsequent
20 time under the Sonnax factors either for an appellate
21 litigation in the Michigan Supreme Court and, certainly, going
22 back to beginning a trial on the merits, which is -- if somehow
23 that would occur. There's been no trial, no discovery, none of
24 that has occurred and so this would be in its infancy again as
25 it relates to that. And when I say no discovery, obviously

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1 there's a motion for summary disposition so there was some
2 amount at that point but this has not been something that
3 would -- we think that the movants here are asking for too much
4 relief.

5 So, the debtors are prepared, Your Honor, to agree,
6 as we were, prior to appearing in court today, to a limited
7 modification of the stay to go back to the Michigan Court of
8 Appeals and conclude that phase of this litigation. We'd ask
9 Your Honor to require the Palmer estate to come back to this

10 Court for any further relief beyond that and justify it under
11 the Sonnax factors at that time.

12 THE COURT: Okay. All right. I have in front of me
13 a motion by Cindy Palmer as personal representative of the
14 estate of Michael Palmer for relief from the automatic stay to
15 pursue to its conclusion pending litigation in the State Court
16 in Michigan.

17 The debtor has consented to relief from the stay in
18 part to permit the conclusion of the pending appeal in the
19 Michigan State Court but not any subsequent appeal in the event
20 that the trial court is reversed -- a trial of the litigation.

21 As I said, in connection with the prior motion, when
22 an unsecured creditor seeks relief from the automatic stay to
23 pursue litigation, it needs to establish or pass an initial
24 burden of showing cause under the Second Circuit's Sonnax case.
25 If it meets that burden then it needs to -- the Court needs to

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1 evaluate several factors, some of which may be pertinent or not
2 in connection with the analysis as to whether cause has been
3 shown. But it is a fact-based inquiry.

4 In light of that fact, I'll grant the motion to the
5 extent that the debtors have consented to it. And if further
6 relief is sought or desired by Ms. Palmer, she can come back
7 here in light of the current state of facts and I'll analyze
8 those facts under the Sonnax analysis at that time. But, there
9 are too many different alternatives that could pertain here
10 beyond simply taking the matter through the current pending
11 appeal for it to be appropriate to me to apply the factors
12 under various hypothetical scenarios.

13 So, I'll grant the relief to the extent that the
14 debtors have consented to it.

15 MR. MASTROMARCO: Your Honor, if I may, there's one
16 issue that I'm concerned about and it wouldn't be in the event
17 that we were to win in the Court of Appeals. It would be if we
18 were to lose because we have a very short period of time in
19 which to file an application to the Supreme Court.

20 THE COURT: You can come back on an expedited basis
21 then. I won't hold you to the omnibus date if you can show me
22 that you have an expedited need.

23 MR. MASTROMARCO: If we could put something in the
24 stipulated order possibly to the effect that in the event of an
25 adverse finding by the Court of Appeals that the stay is

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1 reentered, then that would probably prevent us from having to
2 rush out here, too.

3 THE COURT: Well, no. I'll remember it. I mean, you
4 just -- just based on what you've told me today -- I don't
5 really know the rules of a Michigan appellate process. All you
6 need to do is file a short affidavit requesting expedited
7 treatment and I'll give it to you.

8 MR. MASTROMARCO: All right. Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. BUTLER: Your Honor, the next matter on the
11 agenda, matter number 15 is the O'Neill lift-stay motion. This
12 is at Docket No. 2748. And again, we'll defer to Counsel to
13 present this motion.

14 MR. MENAKER: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. MENAKER: Richard Menaker for the movants, Mary
17 and Liam O'Neill. This lift-stay motion seeks to permit
18 resumption of the state court personal injury action in the
19 Illinois state court that had been underway for two years at

20 the time of the Chapter 11 filing.

21 The accident in question resulted in Mrs. O'Neill's
22 losing both legs. I have three points. First, I'd like to
23 show how issue has been joined. Secondly, address the
24 questions of distraction and bite-back, that is, whether the
25 estate would be effected and third, address the question of

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1 whether any further proceedings are needed on the motion.

2 The first point is how issue has been joined. We saw
3 this morning for the first time the debtors' reply to our
4 supplemental submissions. Now, most of the clouds that may
5 have existed previously have been lifted. Our ability to study
6 that reply, however, has been somewhat limited, so, I apologize
7 in advance if I have any misunderstandings about the status of
8 the insurance situation. The motion, which we made back in
9 March, was to lift the stay on the grounds that the O'Neills
10 would rely on the insurance. The debtors responded two-fold,
11 first, that the stay should not be lifted because there would
12 be a distraction from the much more important things that they
13 were dealing with in connection with the reorganization of the
14 estate -- or reorganization of the company. And, secondly,
15 that they were self-insured to the extent of one million
16 dollars per occurrence, so that this would be a direct hit on
17 the estate.

18 We responded, first, that because the insurance
19 carriers were handling the defense, the distraction would be
20 limited, and this is an ordinary course of business type of
21 matter for a debtor-in-possession to continue its business so
22 distraction should not be an issue here. And I don't think
23 that that has been a major issue, really briefed heavily since
24 the beginning of the issues first joined in the motion papers.

25 But, secondly, and the more important point, on the

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1 matter of the million dollar self insurance, or self-insured
2 retainage -- that was covered by a carve-out as a result of the
3 debtors' insurance motion made back in December. And, as a
4 result of the back-and-forth in the papers, we asked if there
5 was any question on exactly how the insurance carve-out worked,
6 based upon the insurance motion that there be discovery. And
7 the Court granted discovery, we had some limited discovery
8 which gave us an opportunity to see the insurance agreements.

9 The insurance agreements were provided to us subject
10 to confidentiality, we objected to the confidentiality of the
11 agreement, but we have filed under seal one endorsement, or a
12 declaration -- and the Court, I trust has had an opportunity to
13 see that --

14 THE COURT: Right.

15 MR. MENAKER: -- understands our point about that.
16 We think it deals mainly with an issue of distraction rather
17 than the issue of the bite-back.

18 THE COURT: Well but, isn't it conceded that there is
19 bite-back? Financial bite-back?

20 MR. MENAKER: No, well. There is bite-back only in
21 this respect, Your Honor. There is a carve-out of funds, a
22 letter of credit in the amount of 19. --

23 THE COURT: Well, you're getting -- if you're getting
24 into areas where you're going over the confidentiality
25 limits --

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1 MR. MENAKER: I don't think -- no -- the 19.1 million
2 is not confidential I --

3 THE COURT: All right, I just want to make sure I'm
4 not sure that --

5 MR. MENAKER: No, I don't think there's any -- any
6 issue having to do with the funds that have been set aside for
7 the payment on a claim of reimbursement by an insurance carrier
8 is non-confidential, I believe.

9 THE COURT: Okay.

10 MR. MENAKER: I don't think there will be an issue.

11 THE COURT: Fine.

12 MR. MENAKER: And --

13 THE COURT: See, the point is, the estate will take a
14 hit, but it's pre-funded that hit.

15 MR. MENAKER: It's pre-funded. It's carved out and
16 approved by this Court and I think -- then let me get to my
17 second point, Your Honor. I think distracting -- maybe I
18 should put distraction aside. I just don't think that that's
19 an issue here. I trust, if the Court wishes me to address
20 that, I will be glad to do so, but distraction took up most of
21 the papers opposing us, and there were a few paragraphs that
22 dealt with the matter of the estate will take a hit and not a
23 word was said about the letter of credit. The word "letter of
24 credit" did not appear in the opposition papers that were
25 submitted in response to us. It appears -- the word appears

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1 once in the reply that I read for the first time this morning.
2 Here's the contention. The contention is, by the debtors, that
3 the insurance carriers -- yes the insurance carriers will pay
4 first dollar. They admit that.

5 Now Your Honor may recall that there was a footnote

6 in which there was -- in their original opposition in which
7 they said it's not certain that the insurance carriers will pay
8 first dollar. Maybe it'll come directly to us. That's not
9 longer the position. It is conceded that the insurance
10 carriers will pay first dollar on our claim if it's allowed to
11 proceed and it proceeds to a judgment with damages against
12 Delphi. So now the position is, well, there will be
13 reimbursement sought by the insurance carrier. The insurance
14 carrier will then go back against the estate. But they will
15 not go back against the estate as such. They will go back to a
16 pool, which has been set aside and which was approved in the
17 motion that was -- as a result of the motion that was made back
18 in December, on notice to the creditors' committee. And that
19 is the only extent to which there is any call upon funds that
20 came from Delphi.

21 And we believe that what has happened here, is that
22 this Court, in order to allow insurance to proceed, in order to
23 allow the ordinary course of business of Delphi to proceed with
24 the existence of insurance coverage and the processing of
25 claims that occur -- whether it's personal injury or workers'

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1 compensation -- the Court has allowed a certain fund to be put
2 there to make sure that the insurance carriers would be in
3 place and would provide the services and the funding to provide
4 first dollar coverage in these kinds of cases.

5 Now, what is the argument on bite-back? That goes
6 beyond the existence of a preexisting fund. It appears in once
7 sentence in the reply. At Page 6 of the reply that we saw this
8 morning, it's dated the 16th, last Friday, and I know that the
9 Court will have read it. This is at Page 5: the debtors say,
10 if there was a draw down on the letter of credit that was

11 issued under the debtors' pre-petition security facility quote,
12 "this would in turn increase the amount of funded debt owed to
13 pre-petition lenders" unquote. No citation to the record; no
14 reference to any such pre-petition debt or increase of it.
15 Your Honor, we do not know where that comes from. That is the
16 only respect, it would appear, in which there would be some
17 impingement upon the estate. Now, we haven't heard any
18 expression of concern from the pre-petition lenders that
19 allowing the stay to be lifted and the O'Neills to proceed
20 would affect that. So either that statement has to be
21 discounted, or if it becomes a concern of the Court that that
22 is one respect in which there would be a bite-back to the
23 estate, then we need to know about it. There has to be a fact
24 that is proved to the Court, established to the Court's
25 satisfaction that would show that there really was a bite-back

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1 in that respect.

2 Finally, I'll note that the O'Neill's have commented
3 on the claims procedure motion in our supplementation. That's
4 for later in this proceeding, we don't plan to speak to it at
5 that time. As long as we can opt out, we're not aggrieved.
6 Thank you, and I'd like to reserve two minutes for rebuttal.

7 THE COURT: Okay.

8 MR. BUTLER: Let me deal with the bite-back issue
9 first, and then I'll work back on some of the other matter
10 Sonnax factors. Before we brought -- the insurance order, in
11 my view, is a complete red herring here. The insurance program
12 is the issue. The insurance order simply approved the
13 continuation of the insurance program. The insurance program
14 that we have requires the debtor to self-fund at least the
15 first million, and in some cases an amount larger than that,

16 but for this case, I believe it's a million dollars of
17 exposure. The way in which that funding is accomplished with
18 our insurer is they required that we provide that funding to
19 them in a pool. And there a -- I won't go through all the
20 details, some of which would be confidential, but there's a
21 process by which they evaluate actuarially what they think that
22 pool would be with respect to the claims that are outstanding,
23 and then we fund. That's the way it occurred pre-petition, it's
24 the same way it occurs post petition and Your Honor authorized
25 us to continue in those practices. The way in which we provide

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1 that funding to the insurer, I believe, is through a letter of
2 credit issued, in the first instance, by our pre-petition
3 lenders. I'm not sure whether it's pre-petition if the DIP
4 lenders had that LC in a moment. But if the LC is actually
5 drawn on, then with the funded debt reference is simply the
6 operation of the way the loan agreement works. If there's an
7 LC right now, if the LC's drawn then that debt becomes a funded
8 obligation and is repaid to the secured creditors by the
9 debtors. However one wants to slice it, the debtors are on the
10 hook for the first million dollars of exposure in this case.
11 And that's the bite-back that we're talking about. It's real
12 dollars, and the fact that we have provided for it and that
13 it's a secured claim, if you will, through the providing of
14 collateral to the insurer, I don't think changes the ultimate
15 exposure. It's an exposure to the estate, the estate will have
16 to make those payments and that's the financial bite-back that
17 would be considered under the Sonnax factors. As it relates to
18 the balance of the issue, this is a personal injury case
19 arising out of an alleged failure of an electrical system in
20 the 2000 vehicle. And the driver got out -- when the vehicle

21 stalled, the driver got out of the vehicle and then was hit,
22 once outside the vehicle. And that's -- the personal injury is
23 related to that injury. This matter has had some written
24 discovery it has not yet completed the deposition discovery, it
25 has not, to my knowledge, been set for trial by Cook County,

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1 although I believe it has been released for a setting by the
2 Cook County System. Judge, I'm familiar with it as a lawyer in
3 that jurisdiction. But it's not ready for trial in the State
4 Court and, as we looked at it from the Sonnax perspective, Your
5 Honor, this will -- this is a significant claim against the
6 estate. Not just monetarily but in terms of the claims that
7 are being made, it will require our attention. We addressed
8 that in the papers. But in asking that the Court not grant the
9 motion now, our principal dispute with the movement has been
10 their assertion that they will look only to insurance proceeds.
11 They're looking, basically, to the first million from us and
12 the excess insurance proceeds from the insurance companies.

13 THE COURT: And the self-insured retention is per
14 claim?

15 MR. BUTLER: Yes. Yes, it is, Your Honor. That's
16 all I have on this, Your Honor.

17 THE COURT: Okay.

18 MR. MENAKER: Just a quick word. The insurance
19 motion is not a red herring. It established a new letter of
20 credit in a large amount. And there's no mention -- there's no
21 mention in connection with that motion of a loan agreement, as
22 if there were some kind of an unsecured, floating opportunity
23 here for the debtors to obtain these millions of dollars of
24 additional loan receiving ability. It's our understanding --

25 THE COURT: Well, whenever there's a letter of credit

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1 issued, someone has to issue it. They don't do it for free.
2 MR. MENAKER: Right. But presumably, it's secured.
3 And presumably it's secured by funds that have already been set
4 aside for that purpose. And, therefore, this Court has
5 approved those funds to be available to be used to satisfy any
6 claims made by the insurance carriers, after having made their
7 first dollar payments to any claimants. It was understood at
8 the time that motion was made, was granted, that those funds
9 would be available to satisfy claims of the type that the
10 O'Neill's make today. And, therefore, those funds are there
11 specifically for that purpose. It's a carve-out of which we
12 are the beneficiaries. It is to be dealt with as if it is
13 nothing more than an unsecured, additional, pre-petition claim
14 for some lenders out there, who don't care otherwise, and
15 aren't even commenting now. It's simply not the case. If
16 there is any doubt in the Court's mind on this point then we
17 ought to get the facts established for sure. Because no ruling
18 should be made by this Court with there being a vague, hazy and
19 indefinite assertion that all this does is increase our pre-
20 petition debt.

21 THE COURT: But what additional facts would there be?

22 MR. MENAKER: Whether, for example, the letter of
23 credit isn't -- is secured by funds that already exist. Or by
24 property that exists which has been carved out from the estate
25 and set aside as a basis for reimbursement of an insurance

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1 carrier, which exists to be able to pay us if we have a
2 legitimate claim. If those lost legs are, in fact, something

3 that leads to damages, then we are to be paid by the insurance
4 carrier. And funds have been set aside from the insurance
5 carrier to recover in this proceeding as an administrative
6 claim. This is -- it's not a bite-back in the sense that I
7 believe the Court was concerned that there might be a bite-
8 back. It is, in effect, there's a flow-through to which we are
9 especially secured claimant with the O'Neills, because we can
10 turn to an insurance carrier that must pay us if there are
11 damages. Then there's of course, above the million, and this
12 is also not confidential, there's excess if it's greater than a
13 million dollar claim. And there's an excess carrier that -- as
14 to which there's no retainage. Then the insurance carrier has
15 been protected because of an application the debtors made to be
16 sure that the insurance carrier would be protected, so that the
17 insurance carrier would continue with the insurance program.

18 THE COURT: But, you're making the extra leap that
19 because the debtors got approval to have the coverage that they
20 have to protect themselves against claims that are in excess of
21 the self-insured retention, that I should ignore the SAR.

22 MR. MENAKER: Well, it's -- in Paragraph 3 of their
23 response they acknowledge that the insurance carrier will pay
24 first dollar. And I think that is a critical point. As long
25 as it is understood that the insurance carrier, during the

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1 course of this bankruptcy, has the obligation to pay first
2 dollar, then we're relying on that. And we will look only to
3 that.

4 THE COURT: But you're not. Because it's -- because
5 you know for a fact that they immediately will come back and
6 get that first dollar from the estate. They're not really
7 paying the first dollar.

8 MR. MENAKER: The question, Your Honor, is whether
9 that pool that exists for the insurance carrier to come back is
10 something that can be drawn on properly or not. Is it there
11 for a purpose?

12 THE COURT: I agree with that, but that's why I'm
13 saying what more discovery would you want. I mean the motion -
14 - the motion to approve the insurance program didn't say, did
15 it, that, you know, the debtors have set aside the first
16 million dollars of every claim covered by the program to pay to
17 the -- to pay to personal injury claimants, have they?

18 MR. MENAKER: What it said is that there will be a
19 letter of credit on which the insurance company can draw when
20 it has circumstances, such as the payment of damages, which
21 allows it to draw. The motion that was made was to create the
22 pool that we now seek, in effect, to draw on, although we don't
23 draw on it directly, we go to the insurance carrier. And only
24 the insurance carrier goes back for the reimbursement. The
25 question on what discovery would we need, only would relate if

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1 it's of any concern to the Court, it would only relate to the
2 question of whether upon a drawing on the pool, that would
3 create an unsecured claim, or an increased unsecured claim by
4 some pre-petition lender. I don't think that's likely to be
5 the case, but I don't know.

6 THE COURT: Well, why wouldn't -- I don't understand,
7 why can't I just accept that it would. I mean, I've never
8 known a bank to issue a letter of credit that doesn't have a
9 reimbursement agreement as part of it.

10 MR. MENAKER: Look, let's just -- of course we
11 haven't seen it, but let's assume that there's a reimbursement
12 agreement. If it's fully secured, already by funds of the

13 debtor -- for example through a letter of credit -- withdrawn.
14 For example through a certificate of deposit that's in the same
15 amount. Those are debtor funds that have already been
16 earmarked and set aside with the approval of this Court on
17 notice to the creditors that that's what the purpose would be.
18 It would be there to create a pool for these administrative
19 claims that would be made by the insurance carriers during the
20 course of the proceedings. This is not your bite-back, Your
21 Honor, I respectfully submit.

22 MR. BUTLER: Your Honor, counsel may have just given
23 the argument as most eloquent as to why his motion must be
24 denied under the Sonnax factors. The -- what he purports to
25 say is that he believes that the insurance order by you

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1 essentially allowed or elevated all pre-petition claims that
2 might go against insurance to be fully secured administrative
3 types of claims by creating that fund. That's not what the
4 order did at all. But that's what he would assert. And that's
5 not, I think Your Honor's got it exactly right. That if this
6 litigation is permitted to proceed and the plaintiff prevails,
7 the first million dollars of exposure comes out of the hide of
8 this estate. The fact that it's a -- you know that it comes
9 via a letter of credit which is associated with a loan
10 facility -- which, by the way is secured, not unsecured, as
11 Your Honor is aware -- the pre-petition loans and the DIP loans
12 are fully secured. At least at the moment it appears that they
13 are both fully secured as we look at this. And I don't think
14 the measure is that somehow an unsecured -- a new unsecured
15 claim is created, which is what counsel referred to.

16 Our point on the bite-back issue as well as the
17 distraction issue as you balance the harms, given the state and

18 posture of the litigation below is, we believe, at best, it's
19 premature for Your Honor to lift the stay to allow this
20 litigation to go forward. But that this is better dealt with
21 later in the case, when we're addressing claims administration
22 matters more fully. Thank you.

23 THE COURT: Well, let me just address that point.
24 Where is the prejudice to your client of putting this off for a
25 few months until the debtors' analyzed the claims that come in

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1 connection with the bar date and see where they stand,
2 generally, with regard to personal injury claims and their
3 insurance?

4 MR. MENAKER: Your Honor, in a situation such as our
5 client's, any further delay is a prejudice. If it's only, and
6 particularly if it's only to allow the debtors a few more
7 months to analyze a variety of claims, the weighting -- W-E-I-
8 G-H that would be involved of their interest, the debtors'
9 interest in analyzing claims and trying to get people into the
10 claims procedure that they're going to argue before you a
11 little later today on the one hand, verses our client's who --
12 this is not a wrongful death action. This is someone who's
13 alive with lost legs. It would seem to us that the prejudice
14 is far outweighing on our side than the interest on the other
15 side. And --

16 THE COURT: Well, I'm just talking now about
17 liquidation of the claim. Because it seems to me the stay
18 would -- this is not a case where it's really third-party money
19 that would be paying the claim. So the stay would still apply
20 in a situation where you got a judgment in favor of your
21 client. It would apply to execution. Because it's really not
22 coming out of the insurers, the first million.

23 MR. MENAKER: Will the insurer be barred from making
24 the first dollar payments?
25 THE COURT: It may.

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1 MR. MENAKER: Would the only limitation be on the
2 insurer's coming back against the debtor?
3 THE COURT: The fact of the payment would be to have
4 a distribution out of the estate. So, again I'm not -- I
5 understand, if the money were there, to pay it. And it
6 wouldn't -- you wouldn't need separate stay relief to pay the
7 money. I understand your point completely. That's why courts
8 lift the stay when people are truly going against insurance.
9 But it seems tome that what we're talking about here is just
10 liquidating the claim. Because --
11 MR. MENAKER: Let me --
12 THE COURT: -- a million dollars does come out of
13 estate here.
14 MR. MENAKER: I want to emphasize that, in view of
15 the statement by counsel that the letter of credit is fully
16 secured, we need no discovery. We have a secured letter of
17 credit and the funds are going to come out of the pocket of the
18 insurance carrier to start with. And at some later point
19 they're going to come back. And what they do in this Court it
20 is a matter of whatever Your Honor's order allows the insurance
21 carrier to do at a later point. And that's the conundrum
22 before the Court. I don't believe this can be seen as a true
23 bite-back in the way Your Honor has been talking about it. And
24 it's been approved by the Court and it has to have been
25 contemplated that this is how it would work. Thank you, Your

1 Honor.

2 THE COURT: Well, it's clear how I contemplated it.
3 I didn't view this as the same thing as insurance when I
4 approved this motion, the earlier motion on the program, but.
5 I'll take this under advisement.

6 MR. MENAKER: Thank you, Your Honor.

7 MR. BUTLER: Your Honor, I think the only lengthy
8 matter left on the agenda is the next one, which is the New
9 Brunswick matter. And with the Court's permission, I've just
10 consulted with other counsel involved in that hearing. I'd
11 like to move that off so that we can finish up the other
12 matters I think we can get through them more quickly, and then
13 come back to JCI.

14 THE COURT: Okay, all right.

15 MR. BUTLER: So we'll pass 16 at this moment and go
16 on to 17. This is Automotive Technology International's Lift
17 Stay Motion at Docket No. 3980, and I would defer to counsel to
18 present that motion.

19 MR. BATTAGLIA: Good morning, Your Honor, Christopher
20 Battaglia, Halperin, Battaglia Raicht on behalf of Automotive
21 Technologies International. As you know, Your Honor, this is
22 what I'd like to call round two of this motion. As you may
23 recall when we were here before you several months ago seeking
24 to lift the automatic stay on two patent infringement appeals
25 before the federal circuit. One of which was fully briefed and

1 involved only Delphi as the appellee and you lifted the
2 automatic stay to proceed so that the federal circuit could
3 proceed to its decision. You denied, without prejudice, the

4 motion relative to the second appeal, which is an appeal we
5 term the BATI/BMW appeal in which Delphi is one of twenty-six
6 defendants in that action. That case was not fully briefed,
7 but it was, you know, in front of the federal circuit and was
8 scheduled for mediation. You said, well, I don't want to do
9 anything to derail the mediation, so, proceed with that and
10 then if that's unsuccessful then you can come back before us.
11 I will briefly touch on the Sonnax factors.

12 THE COURT: Well, no. Tell me about the mediation
13 first.

14 MR. BATTAGLIA: Sure, sure. And that's why I think
15 it's probably most appropriate for me to address the issues
16 raised by the debtors. They pretty much cry foul on three
17 fronts. One, that you filed the motion before the mediation
18 actually occurred; two, it's going to cost some money to defend
19 this appeal; and three, we're too busy.

20 Let me address the mediation first. In no way did we
21 proceed in that mediation in bad faith. The filing of this
22 motion only indicates how important this is to ATI. And we say
23 in the very first paragraph, obviously without mentioning the
24 mediation because of the rules, we're not supposed to talk
25 about the mediation, but we say very clearly in the first

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1 paragraph in the first footnote that, to the extent because of
2 the issues that were raised in court when we originally made
3 this motion, meaning the mediation, to the extent that we
4 resolved it, we would withdraw this. We did not want to have
5 to wait until July 19th to the extent that this mediation did
6 not result in a resolution to come before Your Honor. As we've
7 indicated in the first instance, this is unlike any other lift-
8 stay motion you've heard today. This is not a personal injury

9 case where the action is -- the damage is done and over with.

10 This could potentially, if ATI --

11 THE COURT: Let me interrupt you. There are twenty-
12 five other defendants, right?

13 MR. BATTAGLIA: That's true.

14 THE COURT: What's the status of the mediation with
15 regard to them?

16 MR. BATTAGLIA: It's concluded as well, with regard
17 to the twenty-five --

18 THE COURT: And how is it concluded?

19 MR. BATTAGLIA: Without resolve.

20 THE COURT: So that's been reported to the court?

21 MR. BATTAGLIA: I believe it has, but I'd be lying if
22 I said for sure that I knew that that was the case.

23 THE COURT: Okay.

24 MR. BATTAGLIA: Part of the reason why we're here is
25 because the federal circuit wanted to hear from you, Your

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1 Honor --

2 THE COURT: Well has anything been scheduled in
3 respect to the twenty-five other defendants?

4 MR. BATTAGLIA: Has anything -- in regard to --

5 THE COURT: Has anything else been scheduled in
6 respect to the twenty-five other defendants?

7 MR. BATTAGLIA: No, Your Honor. And we'd love to
8 proceed against the other twenty-five defendants but the
9 federal circuit stayed the whole proceeding because they wanted
10 to hear from you first as to how this was going to impact
11 Delphi.

12 THE COURT: There's been no report back to the
13 federal circuit about what to do now that the mediation is not

14 proceeding?

15 MR. BATTAGLIA: I can't say for certain, Your Honor.

16 I believe it has. My understanding is that they've reported

17 back to the federal circuit that the mediation was

18 unsuccessful. But I can't say for certain.

19 THE COURT: And why can't Delphi be severed from the

20 other folks?

21 MR. BATTAGLIA: I would imagine that that would be

22 fine with my client. We'd love to be able to proceed. They're

23 identical issues. I think the only concern is that, you know,

24 Delphi's going to say, well I don't want to be prejudiced if

25 the outcome, you know, turns up --

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1 THE COURT: Are they identical issues?

2 MR. BATTAGLIA: I'm sorry?

3 THE COURT: Are they identical issues?

4 MR. BATTAGLIA: I believe they are.

5 THE COURT: Okay.

6 MR. BATTAGLIA: And that's part -- again, part of the

7 speed of why we want to get in here is that this -- this could

8 be a continuing infringement post-petition. So this claim

9 could be growing astronomically. If I was a creditor in this

10 case this would clearly be on my radar screen along with all

11 the other major matters in this case. But I wanted to address

12 that first, Your Honor, that there was no attempt to try to

13 end-run Your Honor or to trick you into think that we were, you

14 know, trying to end-run the mediation process, because we

15 weren't. The second issue that the debtors raise is that --

16 THE COURT: Well, was there even a meeting?

17 MR. BATTAGLIA: Oh there was a mediation, Your Honor,

18 sure.

19 THE COURT: There was.

20 MR. BATTAGLIAH: The mediation took place. And
21 while, of course, again to the allegations in the debtors'
22 response and without getting into the mediation I can tell you
23 that the ATI was the last party to leave that mediation.

24 THE COURT: Okay.

25 MR. BATTAGLIA: Your Honor, the second issue that the

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1 debtors cry foul on is that they say, this is going to cost two
2 hundred thousand dollars to prosecute, to file these briefs.
3 And all due respect, Your Honor, and I mean no disrespect to
4 the debtors or the debtors' counsel, I find that almost
5 laughable. In the sense of -- in the scheme of this case two
6 hundred thousand dollars -- I believe fee applications were
7 just recently filed and the debtors' counsel's fee application
8 was close to ten million? I have no idea what counsel for the
9 other committees were and conference counsels and secured
10 creditors, but needless to say, and to use Mr. Butler's own
11 words, if this is a case where there are tens of billions of
12 assets and liabilities, two hundred thousand dollars in the
13 scheme of this case, Your Honor, would be one percent of one
14 percent of this -- maybe even less -- in the scheme of what
15 it's going to cost. In the face of a growing -- or potential
16 growing multimillion dollar post-petition claim, if it is found
17 that there is infringement. Likewise, Your Honor, two hundred
18 thousand dollars to do this appeal, I think it's probably even
19 excessive. You've got twenty-five other defendants that will
20 surely want to carry some of the laboring ore if Delphi decided
21 to sit back, and I'm quite sure they could. And the basis of
22 this appeal was a technicality on summary judgment that allowed
23 the lower courts to find in Delphi's favor. This brief is

24 pretty much already written. It's -- I can't imagine that the
25 actual issues are going to vary that much that it's going to

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1 create that much of a disruption to the debtors' proceedings.
2 There's separate counsel -- separate counsel, I believe
3 attended the mediation. It just -- I can't see how a two-
4 hundred thousand dollar issue -- even if it was going to be two
5 hundred thousand dollars, should dissuade this court in light
6 of the Sonmax factors.

7 The last issue that they cried foul on is the timing.
8 That they don't have the time, they are dealing with too many
9 larger issues. Your Honor, like I said, if this was a simple
10 personal injury case where the damage is done and it's just a
11 matter of liquidating the damages, that's one thing. But here
12 the potential damages are growing and they're not small, but,
13 you know, I understand that multi-millions of dollars claimed
14 in this particular case isn't the largest claim that the
15 debtors are going to face, but it is significant.

16 Again, I don't want to bore you with the Sonmax
17 factors, I think everybody in this courtroom are well aware of
18 them. They stated in the brief, I know you read it the first
19 time, I'll go through them again if you need me to, but
20 obviously the high points is federal court exclusive -- court
21 of exclusive jurisdiction. The appeal will definitely bring to
22 a resolution the appellate process. You know, to the extent
23 that ATI loses on appeal, then it's game-over, it's done. If
24 not, we've determined that we would then come back to this
25 court if it's going to take further litigation below then we

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1 would come back to this Court to seek authority to continue. I
2 see -- I don't see in any way how the debtor would be
3 prejudiced by proceeding to have this appeal brought to its
4 resolution.

5 THE COURT: Okay.

6 MR. BATTAGLIA: Any other questions, Your Honor?

7 THE COURT: Okay. No, that's fine.

8 MR. BUTLER: Your Honor, counsel is correct. The
9 debtors' principal, you know, complaint here is the violence
10 that was done by the movant to I think both the spirit and
11 intent of Your Honor's prior ruling. We were here on two
12 appeals: the 2001 appeal, which has been referred to as the
13 BMW Appeal, that's what the subject of this particular motion
14 is, and the 2003 appeal which has been called in its earlier
15 motion, the Delphi Appeal. And that was allowed to proceed to
16 argument and go forward because it was fully briefed, ready to
17 go. The BMW Appeal was not, it was disposed to mediation.
18 Your Honor said, go mediate this, sort it out, and then come
19 back afterwards and think what needs to be done there and Your
20 Honor's statements on the record have been quoted in the
21 papers. That's not what happened here. And although his
22 papers don't call it out, on June 1st, 2006, the Halperin Law
23 Firm under -- you know, subject to Rule 11 filed a motion which
24 said the following things at paragraph 17: "Despite this
25 Court's prior instruction that Delphi and ATI to first seek to

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1 settle or otherwise resolve the ATI/BMW Appeal through channels
2 discussed in the record at hearing on April 7, 2006 -- despite
3 ATI's efforts there's been no advancement to any resolution of
4 the appeal. Given this result and the passage of time, it is
5 clear that the federal circuit, a specialized tribunal for

6 patent litigation is the only appropriate forum for resolution
7 of the ATI/BMW Appeal." It would have been nice had counsel in
8 the papers indicated that the mediation was scheduled to occur
9 four days later on June 5th. In his first paragraph in the
10 preliminary statement it says, quote, "given that the
11 conditions discussed by the Court underlying the decision not
12 to lift the stay do not appear to be present, ATI is renewing
13 its request for lift-stay" end quote. And then from the same
14 paragraph, a sentence later, quote: "Accordingly given the
15 passage of time the utter stagnancy of any resolution of the
16 remaining appeal, ATI renews its request for lift-stay." End
17 quote. And then at Paragraph 4, it says, quote, "the automatic
18 stay has already been lifted with respect to the Delphi Appeal
19 as resolution has neither been approximated nor achieved, ATI
20 renews its request for relief from the automatic stay to allow
21 the BMI Appeal to advance before the federal circuit. Though
22 briefing on the BMI Appeal has not been completed, Delphi is
23 one of twenty-six defendants, many of whom had interests
24 identical to those of Delphi." end quote, it goes on.

25 Your Honor, the mediation was four days later. There

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1 was no -- I mean it doesn't take a rocket science to figure out
2 that that mediation was going to fail in light of this motion.
3 And I don't think -- on behalf of the debtors, Your Honor, we
4 don't think this kind of conduct ought to be rewarded by the
5 Court. Your Honor expected something to happen here. And
6 instead of them going forward in good faith dealing with the
7 mediation, what they did was write under a paper to you -- and
8 nowhere does it say that the mediation was going to be on June
9 5th.

10 THE COURT: Well, isn't that something, though, that

11 is better taken up with the federal circuit? I mean, they're
12 the ones that wanted to have mediation and -- you know, if
13 they're concerned about it, the record could be clear here that
14 I'm not encouraging litigation. If, in fact there was a
15 failure to conduct the mediation in good faith, that can be
16 brought to the attention of the federal circuit court and they
17 can say go back to mediation.

18 MR. BUTLER: Your Honor, I agree with you. I just
19 think that Sonnax calls for an equitable balancing of harm by
20 the Court. And that when people come before the Court without
21 clean hands the Court ought to take notice of that and say,
22 hey, you know, that's not appropriate. And I can't imagine
23 that Your Honor expected, after ordering that the stay be
24 lifted to go to mediation that Your Honor expected to entertain
25 a motion to lift the stay before that mediation occurred.

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1 That's the point. And, obviously the mediation did fail.
2 The -- we recognize, I'm not arguing about the circuit court
3 being the appropriate court to deal with appellate patent
4 litigation. There is, I think, as we said in our papers, other
5 harm to the debtors which we've outlined. But I think the
6 single problem here is when people come in to get motions to
7 lift-stay and the Court grants relief, if people don't follow
8 the relief that's been directed by the Court, I think that the
9 Court, the next time they come in, shouldn't grant the relief.
10 I mean, otherwise, I think it's just open invitation for people
11 to come to this Court for their own agendas to do -- and to
12 ignore the orders of this Court. That was the problem that we
13 had. It was beyond disappointing to the debtors that this was
14 approached in the manner in which it was.

15 MR. BATTAGLIA: Your honor, I'm not going to get into

16 a he-said-she-said with Mr. Butler. But I think some things
17 have been said about myself and my law firm that need to be
18 addressed. As Your Honor knows, we've practiced before you on
19 numerous cases, numerous times, numerous attorneys. I feel
20 that our reputation is stellar. What we say, we say, what we
21 mean, we mean and that's that. The reason why this motion was
22 filed was because this motion -- this hearing was originally
23 scheduled to be heard on the 15th. The only way we could have
24 had this motion heard is if we filed on the 1st. This hearing
25 was then kicked to the 19th, if we thought we had the time, we

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1 would have gladly waited. But that motion was filed
2 prophylactically. It so happened to be prophetic, but that was
3 not the intention. My clients went to that mediation to
4 participate in good faith. As you can see, we want finality
5 here, Your Honor. If we could have resolved this at the
6 mediation that would have been the preferred resolution for my
7 client. The reason why we are here is because we are looking
8 for speed and finality.

9 THE COURT: Okay. All right, well, I do have some
10 concern given the language used in the renewed motion for
11 relief from the stay that it was not filed on the basis that it
12 was a fall back in case the mediation didn't succeed, but
13 rather, assumed that it was a foregone conclusion that it
14 wouldn't succeed. But, it's not entirely clear that that's the
15 case and there's no record before me as to whether the
16 mediation itself was one in which ATI actually did negotiate in
17 good faith.

18 So, in light of the report, which I gather is
19 undisputed, that the mediation has ended. And given that this
20 litigation is at the appellate stage with just briefing and

21 argument to proceed in front of the only court in the country
22 that can determine the appeal, I will lift the automatic stay
23 in light of the Sonnax factors, to permit it to go forward.

24 The record should be very clear, however, that I am
25 doing this not because I believe that it necessarily should go

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1 forward, and I continue to have a concern that ATI did not
2 pursue the mediation in a way that would have made the
3 mediation work. So, those issues should, clearly, still be in
4 front of the court of appeals if they want to send the parties
5 back to mediation in light of their own determination of the
6 record. And they should not take my order as an indication
7 that it's important for Delphi's bankruptcy case to get this
8 matter resolved on the merits. To the contrary, it seems to me
9 that, particularly with patent litigation of this complexity,
10 that the parties would be well-advised to do all they could to
11 conclude a mediation successfully. So, you can, Mr. Battaglia,
12 you can submit an order lifting the stay.

13 MR. BATTAGLIA: Thank you, Your Honor.

14 MR. BUTLER: Thank you, Your Honor. Your Honor, the
15 next matter on the agenda, Matter number 18 is the Settlement
16 Procedures Motion at Docket No. 4037. This is a motion brought
17 under various sections of the bankruptcy code and Bankruptcy
18 Rule number 9019b, seeking authorization of the Court to allow
19 the debtors to compromise or settle certain kinds of claims and
20 controversies without coming back each time for approval.

21 There have been three objections to the motion that
22 have been filed. The first is the Riverside Claims LLC Motion,
23 rather objection at Docket No. 4154. The second is a objection
24 of the ad hoc equity committee at Docket No. 4162 saying that
25 both it and the equity committee ought to be involved in this

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1 process. And the third is the limited objection of the equity
2 committee Docket No. 40215 saying that the equity committee
3 ought to be involved in this process.

4 We filed two separate responses, one to the Riverside
5 and the ad hoc equity committee, the other to the later
6 objection which was filed last Friday by the equity committee
7 to the equity committee objection. And those are at 242 and
8 241, respectively.

9 Generally, Your Honor, in terms of the procedures, I
10 don't think the procedures are in significant dispute. We seek
11 to implement procedures that would allow the settlement of
12 claims in certain commercial transactions that are not in the
13 ordinary course of business. And there are three kinds of
14 settlements that are excluded.

15 These procedures would not apply to ordinary course
16 matters, they would not apply to settlements that are already
17 authorized under another order of the Court and they would not
18 apply if the debtors compromise or settle dispute outside the
19 ordinary course of business where the final amount of
20 compromise or settlements greater than twenty million for
21 general unsecured claims or greater than ten million for pre-
22 petition secured, pre-petition priority or post-petition
23 controversies.

24 And you're also, Your Honor, I should point out that
25 there's a separate requirement to bring insider resolutions to

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1 Your Honor for review and approval. So this would not, we

2 would not deal with insider claim resolutions under these
3 procedures.

4 It's also important for Your Honor to emphasize that
5 we're not seeking to make payment on any pre-petition claims at
6 this time by this motion, rather this is sort of the beginning
7 of the process of dealing with claims administration. And
8 we're also not seeking to institute a large scale pre-petition
9 claim for reconciliation process at this time. In fact, the
10 bar date, as Your Honor knows, doesn't even run until the end
11 of July. That process will be undertaken in the fall as we
12 begin to sort through the claims process and we have given
13 reports to both the equity committee and the creditors'
14 committee about how that process is going to go forward.

15 THE COURT: In light of that, what is precipitating
16 this motion now?

17 MR. BUTLER: The fact is, Your Honor, we have lots of
18 things -- because we're not talking about claims administrat --
19 you know, we're not talking about all the claims you have to go
20 through. But they're, in fact, claims to be dealt with right
21 now. As we begin to start -- we begin to identify them. We
22 actually have -- we've reported to our committees at our June
23 committee meetings -- we've actually established a claim center
24 that has separate office space in Michigan, begun to staff it,
25 begin to work through it with FTI Consulting, with several

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1 other organizations and people staffed internally from the
2 company.

3 And there are, you know, with a company of our size
4 there are always disputes that come up. Both disputes that are
5 post-petition and pre-petition that -- and we don't want to get
6 into an argument of whether it's ordinary course or not

7 ordinary course, on some of these matters we want to be able to
8 go forward with these procedures. We've used these procedures
9 in other cases, and they seem perfectly -- they seem to us at
10 least, to be advisable here. As I indicate, nobody is really
11 objecting to the procedures themselves. It has a lot to do
12 about what kind of notices and reporting and who gets to be
13 involved.

14 THE COURT: And then the claim center that you're
15 establishing. Does it assume that there's a process where by
16 someone who has authority to deal with the claim in the first
17 instance, prepare some summary and a recommendation and then
18 that's reviewed by someone else? Is that, pretty much how it
19 works?

20 MR. BUTLER: Yeah, I mean that's how that process is
21 going to be working, although it has -- obviously depending on
22 the size of the claim -- different levels of review and
23 different levels of documentation that would be dealt with.

24 THE COURT: So it -- you'd be generating the
25 information regarding the analysis, even internally?

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1 MR. BUTLER: Oh, I think, Your Honor, not only are we
2 going to be generating the information, we have provided --
3 we've actually told both of our statutory committees, including
4 the equity committee that we would be providing them periodic
5 information at the committee meetings.

6 THE COURT: But I mean, on a per-claim basis. We'd
7 leave aside the caps for the moment. There's a memo somewhere
8 on each claim I'm assuming, right? It's just --

9 MR. BUTLER: Well there'll be -- whether it's a
10 memo -- there will be documentation supporting the
11 determination of every claim that is dealt with under this

12 program.

13 THE COURT: Okay.

14 MR. BUTLER: Clearly yes, Your Honor. And as I say
15 the settlement procedures here and the actual process here, I
16 don't think, is -- has been objected to by any party. I think
17 there are four issues that the ad hoc committee in Riverside
18 have raised and a separate issue which, actually, I think the
19 equity committee has raised. There is a question about whether
20 we've sufficiently identified the classes of controversies that
21 fall within the scope of the procedures. There is a concern
22 that the settlement procedures provide the debtors too much
23 discretion to effectuate settlements, that is, the argument
24 which is dealt with in -- has been addressed in some courts and
25 not in others -- as to -- individual matters as to whether

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1 there ought to be some sort of overall basket or diminishing
2 authority as the baskets increase. Whether additional parties
3 should be added to the list of notice parties under the
4 settlement procedures and whether, from Riverside's
5 prospective, we should be required to file quarterly reports of
6 all settlements reached under these procedures. Your Honor has
7 required that in another case, I believe it was required in the
8 WorldCom case. It's not been required in a number of other
9 major cases in this district.

10 THE COURT: But on that one, you've said that you
11 will get an undertaking from every third party that you deal
12 with that they are the proper owner of the claim?

13 MR. BUTLER: Yes.

14 THE COURT: -- and they have the authority to
15 negotiate the settlement?

16 MR. BUTLER: Yes, Your Honor, we will. What we don't

17 want to do it get into the business of trying to figure out who
18 that is. We're going to take the undertaking -- there is so
19 much claim trading going on in this case. Ultimately our view
20 is that the -- you know -- we're going to seek that undertaking
21 from the people that we do business with and, ultimately they
22 have contracts with a third-party because they have been
23 involved in the claim, they'll have to deal with that. But
24 we're going to seek that authority as part of our standard
25 agreement, Your Honor.

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1 And then the question is, again, you know, in these
2 procedures, what level of authority and who should have it.
3 You know, again, our position has been that these, you know, I
4 believe in terms of the way these procedures work, that this is
5 sort of a routine claims administration process here. We do
6 not view this to be a transformation issue. And, therefore we
7 did not include the equity committee in this. And the real
8 question for Your Honor is, is the equity committee going to
9 be, you know, a full-blown statutory committee that's going to
10 do everything in this case the creditors committee does and be
11 their shadow committee. You know, everything the creditors'
12 committee looks at, the equity committee is going to look at.
13 We'll pay both committees to look at everything. We didn't
14 believe, the debtors didn't believe that was the basis on which
15 this Court appointed the equity committee. And, therefore, we
16 have tried to limit our engagement with them to the issues
17 relating to transformation and we have not included them in a
18 number of what I'll call sort of a periodic reporting and
19 involvement. Because this isn't just reporting, this is
20 reporting and the ability to take action. And so -- and, of
21 course the ad hoc committee thinks that they should get the

22 same rights that the equity committee gets. And, you know, by
23 the way there's an ad hoc trade committee that's forming, and
24 I'm sure we're going to hear from them pretty soon. And the
25 question really is, you know, for Your Honor, who ought to be

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1 involved in these processes and when is enough process enough?

2 You know, we meet with our equity committee monthly,
3 we provide them summary information about these matters. But
4 we didn't believe and we don't believe that we should be
5 engaging them to the same level and regularity on these matters
6 that we engage the creditors' committee.

7 THE COURT: Is there an issue with just giving a
8 quarterly report of who you settle with?

9 MR. BUTLER: No, Your Honor. We have that
10 information. The question is whether we file that information
11 publicly, whether we -- we intended to give tabular summaries
12 every month to the equity committee in meetings.

13 THE COURT: Right. No, I mean, is there an issue
14 giving a public filing of that? So that claims participators
15 can see if their assignors are settling things that they
16 shouldn't be.

17 MR. BUTLER: Here's the problem, Your Honor. And
18 that is, the question is, and I think there's a good reason why
19 that there hasn't been sort of a standard process in this
20 district on that issue. Because the question is, who does that
21 report benefit? And I think there's some concern that what it
22 basically does is put a "for sale" sign up for claims traders.
23 They now know which claims have been allowed, and what they've
24 been allowed in, and it allows them to know who to contact to
25 buy the claims. And so the que -- and it certainly facilitates

1 claims trading. I understand why Riverside wants it. It'll
2 give them the opportunity to sort of figure out where to go
3 shopping next.

4 And that's the -- and there's a concern -- and also,
5 by the way to the extent it discloses that you can divine from
6 the settlements the types of claims we're addressing, what
7 we're settling them for, and those kinds of issues, that
8 discloses publicly claim strategies that I think -- personally
9 believe and have always believed -- are prejudicial to the
10 estate. I actually believe that claims administration and the
11 efficient way of handling that, as long as we're consulting,
12 and we believe in this case with the creditors' committee is
13 the primary co-fiduciary, there is an appropriate claims
14 administration process can add value to the estate, can
15 preserve value to the estate. And the strategy one employs in
16 that ought not be open for public inspection.

17 I understand the other end of that is that, you know,
18 people should say well, gee, 9019 should go on separate motion
19 to the Court. And no large case requires that, because it
20 would inundate Your Honor to do that. But, I mean that's the
21 concern. The quarterly reporting, which I know has happened,
22 as I said I recognized Your Honor in this Court and I
23 recognized has occurred in WorldCom but did not occur in a
24 number of other major cases in this district -- really is done
25 for the facilitation and convenience of claims traders. And

1 the question is whether that's what the Court thinks that
2 there's a sufficient -- that when balancing it, that that is --
3 the balancing of that is sufficient to require public

4 disclosure by the debtors of the process in which we're dealing
5 with claims administration.

6 THE COURT: Okay.

7 MR. BUTLER: Thank you, Your Honor.

8 MR. KURTZ: Good morning, Your Honor. Glenn Kurtz of
9 White & Case on behalf of the ad hoc committee of equity
10 holders. I don't think Mr. Butler is entirely accurate in
11 saying that nobody really contests the procedures. We
12 certainly believe that the procedures are unauthorized by
13 statute. However, we believe on a consensual basis this can be
14 done and we suggested the way that we would provide consent,
15 which is basically to provide us notice and the same
16 opportunity to object that other parties have here.

17 I'd also, generally want to start by pointing out
18 that there is no precedent for the settlement procedure. There
19 certainly are other examples of it. To the best of our
20 research, and Your Honor will know this from Parmalat, will
21 certainly know whether we're wrong or not, we can find no
22 objections and certainly no discussions of these issues. They
23 go in on a consensual basis and, as I'm going to get to, these
24 can go in on a consensual basis. I'd also note that this
25 particular settlement procedural order goes beyond any other

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1 procedural order I've seen, including in Parmalat, by factors
2 of multiples with respect to the thresholds that the debtors
3 seek to be able to settle without providing any information to
4 anybody. And that, lastly, just as a general matter before I
5 go into the particulars, the notion that significant parties in
6 interest shouldn't have a notice of claims and how they're
7 being resolved because, according to Mr. Butler they're not
8 transformational, we disagree with completely. Claims can be

9 billions of dollars in value and we care very dearly about
10 making sure that those are handled in an efficient way and in a
11 fair way.

12 There are basically two triggers here that we care
13 about, and the first one is the ability of the debtors to
14 settle for up to a million dollars, claims with no aggregate
15 cap. We have some concern that the debtors haven't put in a
16 record as to what the claim universe is, as to what
17 distribution of claims in the aggregate could amount to, up to
18 a million dollars. We are before the bar order date, unlike
19 Parmalat, Your Honor entered this order after the bar date.
20 And so, we don't think debtors did or can sustain their burden
21 of showing that there would be some sort of administrative
22 convenience that would outweigh notice to other parties
23 associated with the 9019b. But we do recognize that there are
24 efficiencies in allowing the debtor to effect settlement
25 without further court order. And although we don't know

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1 whether a million dollars is the right number, we're sort of
2 prepared, in the interest of cooperation to agree to that with
3 a couple of clarifications.

4 Your Honor may or may not recall that the number that
5 was used as a threshold for settlements without judicial review
6 in Parmalat was twenty-five thousand dollars which is a small
7 fraction of the number here. Our only real concern with
8 respect to the million dollar number is that it not be a way to
9 settle claims that are similarly situated in a piecemeal
10 fashion. So that we wanted clarification that it doesn't pick
11 up something like a labor dispute, where arguably, under some
12 stretch of law, individual employees would have claims and that
13 those claims would all be under a million dollars, but in the

14 aggregate could amount to billions of dollars. And, likewise,
15 there is some notion of environmental claims. And although I
16 again think there's some substantial legal issues, that would
17 be associated with it, we want to ensure that you can't settle
18 out thousands of individual personal injury claims arising out
19 of some sort of similar situation like a mass tort, and,
20 thereby effect billions of dollars worth of liability on claims
21 that otherwise look like they had a reasonably low threshold.

22 So the first part we effectively agree with, subject
23 to clarifying that we can't find ourselves in the high hundreds
24 of millions, if not billions of dollars of liability without
25 any oversight whatsoever.

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1 The second trigger, and one that we also are very
2 concerned with, is the form of relief that allows the debtor to
3 settle the claims between a million and twenty-million with
4 notice to some parties but certainly not to anybody I represent
5 or to the equity committee. And in that respect, I'd remind
6 the Court that we're representing parties that hold some
7 twenty-two percent of the equity and some two-hundred million
8 dollars in sub-debt. So they have a significant interest in
9 the case. The debtors, again, have the same sort of
10 evidentiary shortfalls but ones that, again, we're prepared to
11 live with so long as we're entitled to receive notice and an
12 opportunity to object if that's appropriate.

13 There is no other claims procedure order I can find
14 that comes close to allowing twenty-million dollars of
15 authority. The debtors have said in Court, they've said in
16 their papers that there's some burden in providing notice to
17 the ad hoc equity committee. That's not right, I mean, it will
18 take a matter of minutes to type in three or four email

19 addresses and put it on the distribution list that will be set
20 up for purposes of notifying parties under any order Your Honor
21 enters with respect to settlements. The equity committee was a
22 little more forward in the way they characterized the equity
23 committee concern, and that was, they don't want the equity
24 committee to have an opportunity to look at these issues and be
25 heard on them. And I suggest to Your Honor that 9019b may

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1 arguably have some administrative convenience facet to it but
2 most certainly it is not a vehicle pursuant to which the debtor
3 should be able to maintain a secret, significant settlements in
4 order to avoid a dispute. I don't think 9019b can be used to
5 avoid disputes, but rather to avoid administrative burden. And
6 the burden associated with seeking seriate motions to approve,
7 not the burden of actually litigating an issue that a party
8 would raise. So I don't think under any circumstance that they
9 should be able to rely on that sort of interest.

10 And I raise all this because I'm trying to create a
11 way that the debtors get what they want and we get what we want
12 and it's a transparent process, and nobody has to test 9019.
13 But I do want to note that, without any assurance that's what's
14 happening that I don't think this is permitted under 9019.
15 9019 is obviously a statutory section providing for judicial
16 approval of claim settlements. 9019a addresses single cases,
17 and there's a lot of law on it. They direct that the court has
18 to engage in a detailed review, not a de novo trial, but a
19 detailed review of the merits of the claim, the damages, the
20 potential defenses and the like before blessing a settlement.

21 9019b which has very little case law expands that to
22 a number of cases and calls them classes. We submit that a
23 class of cases in using its common parlance are cases with

24 similar subject matter. I recognize that some of the cases
25 that have not received objections and have not been adjudicated

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1 have adopted financial thresholds. I don't think that's right.
2 I think that 1, if Congress wanted to have financial
3 thresholds, they could have adopted those. They could have
4 said for administrative convenience, depending upon the size of
5 the claim and the debtor, you could apply for a delegation of
6 judicial authority but they don't do that.

7 As I mentioned in common parlance, classes are
8 similarly situated claims, Rule 23, in bankruptcy court the
9 plan processes in the voting classes. I don't know any
10 precedent for a class being a matter of a financial threshold.
11 And then, most significantly, I think, that it's fundamentally
12 illogical to suggest that 9019a requires judicial oversight and
13 review of a single settlement, but that 9019b was intended to
14 apply to a whole number of settlements, a large body, with no
15 judicial review whatsoever other than the initial financial
16 threshold which here are set very high at twenty million and
17 under.

18 So, Your Honor, I think that absent an agreement that
19 the debtors don't have authority to do what they're doing and,
20 as I've outlined, for a very reasonable cost of typing in a
21 couple of e-mail addresses, we don't have the objection.
22 Notwithstanding the fact that the debtors have not shared with
23 us any information about the aggregate number or amount of
24 claims that could fall within their initial million dollar non-
25 reviewed discretion and the twenty million dollar which get to

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1 review. But we're on an expedited basis: ten day's notice to
2 object.

3 THE COURT: Okay.

4 MR. KURTZ: Thank you, Judge.

5 MS. ABDELMASIEH: Good afternoon, Your Honor,
6 Elizabeth Abdelmasieh on behalf of Riverside Claims, LLC. Our
7 objection was limited based upon two issues, one of which was
8 addressed by the debtor in its omnibus response. So, we have
9 the representation that they will negotiate only with the
10 rightful owner of the claim and, we're fine with that.

11 With respect to the second issue, addressed in our
12 objection, it deals with notice of settled cases. And the
13 debtor, in its motion and in its omnibus response relies on
14 orders entered in the WorldCom case and the Parmalat case, both
15 of which are cases in which the debtors in those cases provided
16 periodic notice filed on the docket for creditors and other
17 parties in interest to review. Delphi believes that if they
18 were to follow suit and file similar reports with the court
19 that information would be used against them by other creditors
20 and also by claims traders to know where to go shopping next.

21 It's our position that the facts and circumstances of
22 each case are different and it's up to the debtor to prove that
23 in each case that they settle, that the creditors who are in
24 similar classes are not so similarly situated.

25 We believe that there is no reason why the debtor

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1 needs to shroud their settlement procedures in secrecy and
2 provide no notice to creditors or other parties in interest in
3 this case. If you look at the debtors' omnibus response they
4 cite that the public information could be used to their

5 detriment in potential discussions with other creditors. And
6 they also say that the creditors' committee will provide
7 sufficient oversight.

8 We're not asking for the opportunity to review and
9 object to each of the debtors' settlements, we're merely asking
10 for information in this case. And not just to know where to go
11 shopping next, but, as creditors, by whatever mechanism that we
12 are creditors, we do have a right to know what's going on in
13 this case and what the debtors are doing with respect to
14 settlement of claims.

15 I believe debtors' counsel just represented that its
16 claims agent will be keeping information on a per claim basis,
17 but we believe would be very easily transferred into a report
18 that could be filed with this Court.

19 THE COURT: But, what purpose would that serve, if it
20 was after-the-fact?

21 MS. ABDELMEIEL: After-the-fact it would affect our
22 rights under assignments of claims that we've entered into with
23 other parties, and merely just for informational purposes.
24 Also, to know, we have a monetary, financial, pecuniary
25 interest in the case. Knowing what types of settlements the

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1 debtor is entering into, that affects what the payout to us
2 might be, since we have a pecuniary interest in that respect.

3 THE COURT: Okay.

4 MS. ABDELMASIEH: Thank you.

5 MS. STEINGART: Good afternoon, Your Honor, Bonnie
6 Steingart again on behalf of the equity committee. We've heard
7 argument already, on certain of the statutory points that have
8 significance here. But the equity committee is basing its
9 objection on the debtors' failure to include it in the notice

10 provisions in this order which provides for a great span of
11 authority for the debtor to settle all sorts of claims.
12 Mr. Butler is fond of saying, well, not
13 transformational, not transformational. Your Honor, my view,
14 again is, whose decision is that? I think that the committee
15 needs to have counsel as to which of the claims that are being
16 settled go to transformational issues, which don't go to
17 transformational issues. Again, the ability to review the
18 settlements does not mean that we are going to exercise rights
19 we have to object, willy-nilly. I think that, to the extent
20 that the committee is there, and to the extent that the
21 committee is there to address issues that go to transformation,
22 that go to plants and how the plants operate on a sort of macro
23 basis, on the kinds of businesses the debtor is in or the
24 debtor is exiting, on the kind of arrangements it's making with
25 major suppliers, how it deals with major claims, whether those

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1 be bundled or unbundled, Your Honor. There may be five or six
2 or seven or eight or nine claims that may be under twenty
3 million but are of the type, taken together, do hearken to a
4 transformational issue.

5 This is -- this gives the committee the right to make
6 that determination and, if necessary, to be heard on it. It's
7 not an issue where we will be looking to find reasons to
8 question the debtors' discretion. I think all of us will be
9 relieved when the debtor has procedures in place and does these
10 things in an orderly way.

11 As to the debtors' monthly reporting, the debtor has
12 been meeting with the equity committee and with the creditors'
13 committee monthly. These are voluntary meetings that can occur
14 or not occur to the extent that the debtor has time, has

15 inclination based on other things that occur in the case. The
16 fact that Mr. Butler refers to these repeatedly in saying,
17 well, these people are in the loop, I think just goes to show
18 that there are issues being dealt with by the debtor in the
19 context of settlement agreements, and in the context of other
20 matters that the equity committee should be aware of, and
21 should have the opportunity if need be.

22 In the unlikely event, I might add Your Honor, that
23 need be to sort of say, this is a transformational issue that's
24 being dealt with in a manner that we have an issue with. And
25 to be able to bring before the court that issue. I think that

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1 the debtor here has asked for shortened notice, shortened
2 review and we certainly do not take issue with this if, from
3 the debtors' point of view that facilitates its administration
4 of these kinds of claims. But the numbers do get big, Your
5 Honor. And I think as we've seen with the sale motion that we
6 have here, or other motions, sometimes you have under the
7 twenty million dollar number, questions that deal with
8 transformational activities.

9 So, I think that, when we look at this and we look at
10 this kind of an omnibus order that deals with an important
11 aspect of how the debtor is dealing with pre-petition claims
12 and its business as a whole, that the committee should be
13 getting notice and should be able to participate to the extent
14 it determines is necessary in objecting to such claims.

15 MR. BUTLER: Ms. Steingart has just given the Court,
16 I think, a sort of an eloquent explanation of the difference of
17 views between the debtors and the equity committee on the
18 claims process. Should the equity committee be involved, you
19 know, in every way in the claims process. Because, you know,

20 we keep coming back to this, what's our remedy to be. How are
21 we going to object to a fee application where they -- if Your
22 Honor allows them this involvement, then they're going to have
23 self-justified looking at every claim that comes their way.
24 Because how could they otherwise make the decision about
25 whether it involves their attention?

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1 And so we did not understand that the Court's
2 appointment of the equity committee was as pervasive as is
3 apparently being construed by the committee itself. Because
4 under their definition, everything is a transformation issue.
5 And we're going to see that, as we see through their pleadings
6 today. So all -- every settlement we make, no matter what
7 size, no matter what it covers, they ought to be able to review
8 and make a decision about. And she says, whose choice is it,
9 Your Honor, I thought it was your choice. I thought that the
10 Court, when it issued its opinion, set out clear parameters and
11 Your Honor's obviously because it's your choice and because you
12 preside over these cases, Your Honor can make it whatever Your
13 Honor wants it to be and we'll respect it and we'll do exactly
14 whatever you ask us to do. But the reason that we did not
15 include the equity committee in this process or in the lift-
16 stay process, because they filed a similar objection they
17 wanted to look at all the lift-stays too, that's the next
18 motion. And they should have a review on every lift-stay as
19 well. We did not include them because we did not believe as we
20 read and reread and reread your March 23rd opinion, we didn't
21 believe that it contemplated this level of involvement in
22 claims matters.

23 As for the ad hoc committee in Appaloosa, I
24 acknowledge freely on this record, Your Honor, we have not had

25 the best track record of reaching agreements with Appaloosa

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1 during the course of this case on much of anything. We're
2 working on that but, in fact, you know, I don't think that if
3 Your Honor is inclined to have any committee review here, I
4 don't think there should be two equity committees taking a look
5 at this. I mean, otherwise why, you know, otherwise let's just
6 disband the --

7 THE COURT: Well Appaloosa's not being paid by the
8 estate so, arguably --

9 MR. BUTLER: Not yet, Your Honor. That application's
10 coming. We will, I have no doubt, but that the ad hoc
11 committee is going to file a substantial contribution
12 application before this case is out. So the debtors will be in
13 this Court, that we'll be facing that issue at some point in
14 the future.

15 But that's what the issue is. And maybe, you know,
16 some of these conflicts could be resolved, Your Honor if we got
17 guidance from Your Honor as to what level you want them
18 involved in. If the equity committee is to be a full-blown
19 statutory committee, we get that. We know how to deal with
20 committees in that manner. We had thought that your opinion
21 was actually much more limited in focus. And that's why we've
22 responded as we have.

23 THE COURT: Okay. I have a motion in front of me
24 which essentially is under Bankruptcy Code Sections 105 and 363
25 as well as Bankruptcy Rule 9019b, which provides that "after a

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1 hearing on such notice as the court may direct, the court may

2 fix a class or classes of controversies and authorize the
3 trustee to compromise or settle controversies within such class
4 or classes without further hearing or notice." Now, to some
5 extent, it's also under Rule 9019a and Rule 2002a(3), which
6 deal with compromises and settlements of individual disputes
7 and notice thereof.

8 The motion seeks to set various hurdles in which the
9 debtor has to provide various levels of notice to various
10 parties or at the lowest hurdle, provide no advanced notice but
11 subsequent reporting to certain parties in the case -- of
12 compromises and settlements that it is proposing to enter into,
13 or in the case of the lowest number has entered into.

14 The rationale for the motion is that with regard to
15 this very active and extensive set of operating businesses to
16 require the debtors to comply with Bankruptcy Rule 2002a3 would
17 be enormously expensive and not in the light of the cost in the
18 best interest of the estate. That is, with regard to certain
19 categories of settlements providing notice to all creditors, as
20 required by a3, subject to the proviso in a3 which says "unless
21 the Court, for cause shown directs that notice not be sent"
22 would be not worth the candle and, consequently would not be in
23 the best interest of the estate.

24 The debtor is not writing on a blank slate here.
25 Courts in a number of cases across the country have approved

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1 authorization in advance for settlements, either on no notice
2 with subsequent reporting or on limited notice to various
3 parties-in-interest in the case. And the debtors have attached
4 two such orders -- actually three such orders -- to its papers:
5 in the WorldCom Case the Parmalat Case and the K-Mart Case.

6 The objections go both to the threshold categories in

7 the proposed procedures as well as to the notice points. Let
8 me deal with the threshold categories first. I think that in
9 three respects the notice -- I'm sorry, the procedures need to
10 be modified. The first is that, consistent with both the
11 Parmalat and the WorldCom Orders, in addition to having a
12 threshold or a series of thresholds for the claims that are
13 being settled, there should be, in each case a threshold for
14 the amount of the settlement, i.e., the amount that was
15 actually in dispute. Because you can see that both in the
16 Parmalat Order that I entered and Judge Gonzalez's WorldCom
17 Order. He uses the phrase "documented difference." Which is
18 really the spread between the bid and the ask in the settlement
19 negotiation, because sometimes that's what's significant as
20 opposed to the overall claim. Secondly, as Mr. Kurtz said,
21 there should be a provision here consistent with what I believe
22 is in the Parmalat Order for settlements that are really
23 aggregate settlements. So that you can't do a bunch of little
24 ones that are just below the threshold, but they're really --
25 it's really one overall deal, which would carry it above the

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1 threshold.
2 And then, third, I -- at least on this record, which
3 is before the bar date and without any real sense on my part of
4 what's actually out there as far as claims that will be in
5 dispute, I'm uncomfortable with the twenty million dollar
6 threshold. I think you should go with the amounts that are in
7 the WorldCom Order on that score. Which sets, as you do for
8 unsecured claims, the one million dollar threshold and a five
9 million dollar threshold for the notice parties. If it turns
10 out that that's too low, you can certainly come back and we can
11 deal with it. But I don't think the record supports twenty

12 million dollars here, at this point.

13 The second issue is the -- who are the notice
14 parties. And in that regard I do look at the Appaloosa group's
15 objection differently than I do at the equity committee
16 objection, because the equity committee really was formed with
17 a specific role in mind and specific limitations recognizing
18 that their role in compensation is just subject to different
19 rules than individual shareholders and creditors. To my mind
20 that means that the only settlements that the equity committee
21 should be included in the notice party group on, are those
22 involving labor or employee claims or those made -- and those
23 made in the context of the shut down or wind down or partial
24 closure of a plant or a business. Because those are the types
25 of issues that I thought they should be focusing on.

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1 That may include customer claims, because in the
2 context of a wind-down of a business you may have to deal with
3 a customer in some respect, but it's only in that context.

4 As far as Appaloosa is concerned, I think that it
5 makes sense to give them notice of claims against the parent
6 company, which is, I believe where they have their own equity
7 interest in their debt interest. Particularly given the fact
8 that there weren't other parties asking for that type of
9 notice, and given the fact that I look at 503b applications
10 pretty narrowly, as people tell you, in the Loral Case, for
11 example. But I think it's -- particularly given that the
12 debtor will have some form of documentation as part of its own
13 processing in doing the settlement that that shouldn't be
14 particularly burdensome.

15 If, for some reason Appaloosa uses this in a way that
16 I think is inappropriate, we can deal with that at the time,

17 but I will not assume that that's going to happen.

18 As far as the periodic reporting is concerned, given
19 the limitation on the threshold amounts -- the reduction of the
20 threshold amounts that I provided in the reporting to the
21 creditors' committee -- I don't think it's necessary to have
22 the public reporting of the settlements. And I can see how
23 that public reporting may adversely affect all the creditors in
24 the estate, as Mr. Butler discussed. And I think that the
25 creditors' committee in the exercise of its fiduciary duties

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1 can adequately represent the creditors in reviewing the
2 settlements in the aggregate to determine if the debtor is
3 going off in some direction that doesn't make sense.

4 So with those modifications I'll approve the motion.

5 MR. BUTLER: Thank you, Your Honor. Can I ask two
6 clarifications? With respect to the information given to the
7 ad hoc committee, the membership in that committee is ever-
8 evolving. Can the information --

9 THE COURT: Well I would assume it would go to
10 counsel

11 MR. BUTLER: Oh, for counsel eyes only?

12 THE COURT: Yeah, yes. And if White & Case has some
13 issue with that as it actually works in practice, you can come
14 back to me, but it seems to me it's really a counsel
15 determination largely anyway, so.

16 MR. BUTLER: Thank you. And the other point, Your
17 Honor, just on the issues that we are sending to the equity
18 committee that are transformational in nature relating to
19 employees or wind-downs -- and I know by customers, I think I
20 understood that -- but wind-downs of plants. I just want to
21 understan -- get some understanding of where that line is.

22 Because, for example, suppliers, our suppliers are -- part
23 of -- some of the people will be doing settlements with our
24 suppliers. Our suppliers supply all kinds of plants, including
25 some that are closing --

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1 THE COURT: No, it's only if the claim arises in the
2 context of a wind-down; if the wind-down implicates the
3 settlement in a material way.

4 MR. BUTLER: Thank you, Your Honor. We'll prepare a
5 revised order and submit it, Your Honor.

6 THE COURT: Okay. And you should circulate that to
7 the objectors. Okay. Well, the lift-stay procedures are
8 pretty close to that, I guess, but.

9 MR. BUTLER: So, so here come the lift-stay
10 procedures, Your Honor.

11 THE COURT: Okay.

12 MR. BUTLER: Matter Number 19 on the record, rather,
13 on the agenda and they're at Docket No. 4038 in the, here in
14 the docket. Your Honor, the lift-stay procedures again, three
15 objections filed. I don't believe, and counsel for the O'Neill
16 claimants is here at document 4173 it's not clear to me, based
17 on our discussions of them that he's going forward with his
18 objection because these are voluntary procedures. So I, we
19 can't be ordered to do this.

20 THE COURT: Right.

21 MR. BUTLER: With respect to ACE American Insurance
22 Company, Docket No. 4205, my understanding is if the form of
23 order or something substantially in accordance with the form of
24 order that we presented, but has been amended is --

25 THE COURT: The blackline that you gave us?

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1 MR. BUTLER: They're okay, yes, Your Honor.

2 THE COURT: Okay.

3 MR. BUTLER: I believe ACE is okay. That leaves us,
4 I've got a note from counsel over there today, so that's -- ACE
5 is okay.

6 THE COURT: Okay.

7 MR. BUTLER: So that leaves us with the equity
8 committee saying that they should be in the business of lift
9 stay, the lift-stay process. And the, I think what they're
10 focused on, Your Honor, is there are lift-stay procedures here
11 that deal with, you know, how we would negotiate mediation.
12 How the insurance policies would reach.

13 And by the way, I should point out, Your Honor, just,
14 because this sort of makes the point about the fact that we
15 have the first funding -- the debtors have the first funding of
16 these claims for the most part. Under these particular set of
17 procedures, you'll notice that Paragraph 5 of the procedures
18 require that the insurers be released. That's sort of the flip
19 side of what these normally are. Most lift-stay procedures
20 I've dealt with in my career, it usually is, release the estate
21 and you can go after the insurance. These procedures are the
22 exact opposite because we fund that first layer -- million
23 dollar layer. And we anticipate either mediated settlements
24 here, they would be for -- you know they would be pre-petition
25 claims, you wouldn't get into this fund at the moment the way

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1 this is designed up. So that there is a reversal of what is,
2 at least intuitive to me, in the normal procedures.

3 And then, what I think the equity committee is
4 focused on is our settlement authority and court approval for
5 dealing with these matters, all of which relate to essentially
6 under the applicable deductible in the insurance program we
7 have five hundred thousand dollars or less if the claim would
8 be a pre-petition general unsecured non-priority claim equal to
9 five hundred thousand or less, then we could resolve that
10 without the involvement of other parties. And if a settlement
11 was in a sum greater than five hundred thousand but less than
12 the applicable deductible under the insurance program, we would
13 give notice to the notice parties. And that, again, was the
14 lenders because of their secured interests in the creditors'
15 committee and did not include the equity committee and we would
16 have the same kind of mechanics as we've had before as it
17 relates to this. And the balance of this I don't think anyone
18 has taken any particular objection to in terms of the
19 procedures we're proposing. Again, we didn't put the equity
20 committee in the place of making lift-stay determinations
21 because we thought it was outside the scope of their retention.
22 And that was the basis for that -- for not being in agreement
23 with that.

24 THE COURT: Okay.

25 MS. STEINGART: Thank you, Your Honor, Bonnie

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1 Steingart. Our objection to this omnibus kind of order is the
2 same as the basis for the objection to the others. I do want
3 to make it clear to the Court that it is not our understanding
4 of our role or our purpose to be a shadow committee. The
5 equity committee has its own issues and, I think, should be in
6 a position to make a determination with respect to the
7 activities that the debtor undertakes as to whether there are

8 transformational issues at stake and whether it would be
9 important for us to have the Court hear us on those matters.
10 Thank You.

11 THE COURT: Okay, all right. I note the changes to
12 the order that clarify that this is really just dealing with
13 the deductible or SAR portion and that the mediation itself is
14 voluntary. And so, I think the only remaining issue is the
15 notice party issue. And I'm going to issue the same type of
16 ruling, which is that, to the extent that -- and I imagine it
17 would be pretty limited in this case -- these lift-stay issues
18 go to labor employee issues, or -- and this is much more
19 likely -- to the extent that they'll go to anything within the
20 equity committee's purview. Issues respecting the wind-down of
21 plants or businesses or divisions or the termination of them,
22 then the equity committee should be on the notice party list.

23 MR. BUTLER: We'll make that adjustment, Your Honor.

24 THE COURT: Okay. These amounts obviously are fine
25 because they are within the deductible and I'm comfortable with

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1 the amounts stated.

2 MR. BUTLER: Thank you, Your Honor.

3 THE COURT: Okay.

4 MR. BUTLER: Your Honor, I think that resolves all of
5 the matters on the agenda, other than the New Brunswick
6 Transfer Motion. It's approaching 1 o'clock, I want to get
7 guidance from Your Honor as to -- whether the Court is --

8 THE COURT: Well, on this one, there's the objection
9 by Wilmington Trust. And, have you resolved the United States'
10 issue?

11 MR. BUTLER: We have, Your Honor.

12 THE COURT: Okay --

13 MR. BUTLER: That was indicated in our response --

14 THE COURT: I thought I saw that. Have you discussed
15 the issue of reserving rights as to claims over in respect to
16 the, you know, the inter-company claim issue that Wilmington
17 Trust raises? That, even though, you know, obviously what the
18 motion contemplates is that Delphi Corp. will make the payment,
19 to the extent it's making the payment as opposed to the buyer
20 or GM that its rights are fully preserved as against DAS.

21 MR. BUTLER: Your Honor, there's nothing in the order
22 that would not preserve any rights that exist. The problem we
23 have here is that -- and it has come up now in a series of
24 motions -- is that Wilmington Trust, which represents bonds at
25 the parent company, who bought subject to labor claims at the

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1 parent company have repeatedly -- and I suspect will in the
2 future -- file objections on every single conceivable motion we
3 file, that suggest that somehow these claims belong in other
4 places.

5 And, you know, the offering memoranda, the 10K, the
6 documents are clear as to the fact these bonds bought subject
7 to these claims. And it doesn't seem to me that a sale motion
8 involving the sale of a plant, the business judgment which
9 nobody is disputing other than Wilmington Trust, where
10 Wilmington Trust says that the parent company -- acknowledges
11 the parent company owns these C collective bargaining
12 agreements, owns the OPEB obligations, owns the pension
13 obligation and has negotiated an attrition program where the
14 debtor, where Delphi Corporation is obtained reimbursement of a
15 substantial amount of that from third parties, that that's
16 somehow a breach of reasonable business judgment, Your Honor.
17 And it's not.

18 THE COURT: Well, no. But I -- but leaving that
19 aside, since you're not seeking -- today you're not seeking a
20 determination either that, you know, forever and a day, that
21 Delphi Corp. wouldn't have some sort form of inter-company
22 claim. So my issue is -- my question is, is that simply enough
23 to resolve this or is there a sufficient concern that DAS may
24 never be able to pay the money back that -- we actually have to
25 deal with this issue.

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1 MR. FOX: May I, Your Honor? Edward Fox from
2 Kirkpatrick & Lockhart on behalf of Wilmington Trust. Your
3 Honor, we did have a discussion with Mr. Meisler and not with
4 Mr. Butler about the possibility of leaving to another day the
5 determination as to which would be the proper party to be
6 responsible for making these payments. And it was my
7 understanding that Mr. Butler was not inclined to leave that
8 issue open. What's happened here, though, is I think we're
9 moving away from the possibility of being able to leave these
10 issues open with respect to which is the responsible party,
11 particularly in light of the debtors' reply papers that were
12 filed Friday.

13 We raised the issue, and the debtors actually raised
14 this in the 1113 hearing in their omnibus reply, and they said
15 then that the parties needn't worry necessarily about whether
16 claims would come back against the estates by virtue of -- if
17 the 1113 motion were granted. And they cited the Continental
18 Airlines Case, which we also cited, for the proposition that
19 rejection of the collective bargaining agreements isn't
20 necessarily going to cause a claim to be asserted against the
21 estates. We believe that that argument holds here. But now,
22 in its reply, the debtor has said specifically that Delphi

23 Corporation is responsible to, I guess, make good on these

24 obligations under the --

25 THE COURT: I just think you all are getting ahead of

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1 yourselves. I mean, unless it's -- and I would find this hard
2 to believe, because if it truly is the case that DAS, you know,
3 isn't potentially good for some portion of this, if, in fact it
4 turned out down the road that it should be paying some portion
5 of it, then, they couldn't pay it today either, because it, you
6 know, it'd be in such bad shape that it couldn't pay it today,
7 so -- and it seems to me the transaction itself has some -- I
8 mean no one's really contradicted the fact that this plant is a
9 loser -- you know, is losing money hand over fist, so -- it
10 just strikes me that if you want to get into which of these
11 debtors ultimately is legally responsible it should be done in
12 a different setting than this. And, hopefully it won't ever be
13 done. And that way the transaction can occur and both estates
14 can be relieved of the costs to the extent that they are liable
15 for it.

16 MR. FOX: We wouldn't necessarily be adverse to that,
17 Your Honor.

18 THE COURT: Okay. Well, do you want to talk that
19 over for a few minutes and then, with your respective sides
20 and --

21 MR. FOX: Be happy to do that.

22 THE COURT: Okay. Okay, so I'll take a break until
23 about five after.

24 MR. BUTLER: Thank you, Your Honor.

25 (Recess from 12:57 p.m. until 1:15 p.m.)

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1 THE COURT: Please be seated. Okay, we're back on
2 the record in Delphi.

3 MR. BUTLER: Your Honor, the next and last matter on
4 today's omnibus agenda is the New Brunswick Transfer Motion, at
5 Docket No. 3927. Pursuant to this motion, the debtors seek
6 authority to sell their battery manufacturing facility in New
7 Brunswick, New Jersey to JCI free and clear of liens, claims
8 and encumbrances; to transition a supply of batteries to JCI
9 from the debtors' manufacturing facility in Fitzgerald, Georgia
10 and to implement an attrition plan with the IUE/CWA for the
11 employees in the New Brunswick facility.

12 Just one note, Your Honor, that program, I want the
13 Court to be aware that that program -- the attrition program as
14 described in the motion -- will change in some respects because
15 of the global IUE/CWA attrition plan agreement that was reached
16 over the weekend. There was a most-favored-nations clause in
17 this program that captures parts of that program. And so, for
18 example, there will be some additional opportunities for
19 IUE/CWA folks, if you approve the subsequent program that are
20 in New Brunswick to have expanded opportunities in the next
21 motion. And we are -- you understand that -- and there are
22 also, some less favorable terms as a result of this. So I just
23 want the Court to be aware that there will be some modification
24 of this program. It's all been negotiated with the IUE/CWA,
25 but there -- understand that there are some modifications.

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1 THE COURT: All right. But for purposes of this
2 motion, what's in front of me is the attrition program that was
3 previously agreed to.

4 MR. BUTLER: Correct, Your Honor. It's simply -- I

5 just wanted to -- we will --

6 THE COURT: Right.

7 MR. BUTLER: -- when we're before you on the 29th and

8 Your Honor chooses to approve that program it will

9 automatically cause there to be modifications to this program.

10 THE COURT: Okay. And the GM contribution to it is,

11 again, as set forth in the papers?

12 MR. BUTLER: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, there have been two

15 objections that have been filed to this. One -- there was

16 first the objection of the United States Department of Justice

17 on behalf of the United States Environmental Protection Agency

18 filed a Docket No. 4116. That matter has been resolved by a

19 new Paragraph 32 to the motion. I'm not going to read that

20 into the record, Your Honor has a copy of it --

21 THE COURT: All right.

22 MR. BUTLER: -- but it's acceptable to the

23 government, to JCI and to the debtors.

24 THE COURT: Okay. I did -- during the break I

25 reviewed it and, that's fine.

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1 MR. BUTLER: Your Honor, with respect to Wilmington

2 Trust Corporation's objection, the parties have agreed to

3 resolve that objection in the following manner. First, we

4 would add a paragraph to the order that would provide that --

5 the entry of the order would be without prejudice for

6 Wilmington Trust to later assert that there should be a claims

7 over against DAS, against the subsidiary, Delphi Automotive

8 Systems LLC, that that claims over agrees and there will be a

9 full reservation of rights of all parties, including the

10 debtors and statutory committees and the IUE/CWA with respect
11 to that assertion.

12 THE COURT: And the claim over would be by Delphi
13 Corporation?

14 MR. BUTLER: Correct.

15 THE COURT: If it existed.

16 MR. BUTLER: Correct. Second, Your Honor, there
17 also -- we would agree that the fact that Your Honor is
18 entering this order today and authorizing Delphi Corporation to
19 perform in the manner in which it's performing and approving
20 the business judgment of Delphi Corporation that you are
21 approving. We would not use that precedentially against
22 Wilmington Trust in any contested hearings in the future if
23 they raise similar objections. And we've agreed to that as
24 well.

25 THE COURT: Okay.

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1 MR. BUTLER: Your Honor, those, and Wilmington agrees
2 that they will take no appeal from this order.

3 THE COURT: Okay.

4 MR. FOX: Your Honor, subject to seeing the actual
5 language of the order when this is put into it, that reflects
6 the understanding.

7 THE COURT: All right, as long as it's consistent
8 with what was just laid out, I --

9 MR. FOX: Yes.

10 THE COURT: Okay, very well. All right, does any one
11 else want to say anything on the motion? I've reviewed it, and
12 I don't think anyone disputes, and I agree that it's within the
13 debtors' business judgment to enter into this series of
14 arrangements in connection with the wind-down of these two

15 plants. So, I'll approve it.

16 MR. BUTLER: Thank you, Your Honor. Your Honor, that
17 concludes the omnibus hearing for June.

18 THE COURT: Okay, thanks.

19 MR. BUTLER: I want to just -- one other quick matter
20 for logistically we are turning our attention this afternoon to
21 finishing up the pleadings on the IUE/CWA's attrition motion.
22 We were planning to submit to file those on PACER tonight,
23 submit a copy to chambers and then submit an order -- a
24 scheduling order to chambers for the 29th, if that's
25 acceptable.

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1 THE COURT: That's fine.

2 MR. BUTLER: Is there a time you want us to put on
3 the notice for that?

4 THE COURT: Well, the hearing would be at 10:00.

5 MR. BUTLER: 10:00?

6 THE COURT: And, I guess the date to object would
7 be -- the 29th is a what?

8 MR. BUTLER: Thursday, Your Honor.

9 THE COURT: So Tuesday at 4.

10 MR. BUTLER: Tuesday at 4 o'clock? Thank you, Your
11 Honor.

12 THE COURT: Okay. It just -- going back to the
13 O'Neill motion, can you make sure that I have a copy of the
14 policy that lays out the SAR? There was just an excerpt in
15 their brief I'd just like to see the policy. That deals with
16 the funding of the SAR.

17 MR. BUTLER: Well, we'll have it delivered to
18 chambers, Your Honor.

19 THE COURT: Okay. Thanks.

20 MR. BUTLER: Thank you, Your Honor.

21 THE COURT: Okay. Thank you.

22 (Whereupon this proceeding was concluded at 1:21 PM)

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2 I N D E X

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4 R U L I N G S

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6 Jeffries & Company retention 17 18

7 application approved

8

9 Motion by PBGC to file 20 14

10 consolidated claims

11 approved

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13 1121(d) exclusivity 21 21

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17 Fried, Frank retention 22 13

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20 Limited objection of 29 8

21 Official Committee of Equity

22 Holders to debtors' motion to

23 approve bidding procedures sustained

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25 (Continued on next page)

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I N D E X

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R U L I N G S, cont'd

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6 Motion of Cindy Palmer

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7 for relief from the

8 automatic stay granted

9 in limited fashion

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11 ATI's Motion to Lift Stay

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12 Granted

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14 Debtors' Motion Approved

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16 Agreed Order with

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17 Wilmington Trust Approved

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C E R T I F I C A T I O N

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4 I court approved transcriber, certify that the foregoing is a
5 correct transcript from the official electronic sound recording
6 of the proceedings in the above-entitled matter.

7

8 _____ June 20, 2006

9 Signature of Approved Transcriber Date

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11 Lisa Bar-Leib

12 typed or printed name

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